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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	Case No. CR 12-00792 YGR
Plaintiff,)	COMPENDIUM OF AUTHORITIES
v.)	RE: UNITED STATES' OPPOSITION TO
HENRY CERVANTES, et al.,)	DEFENDANT'S MOTIONS TO LIMIT OR
Defendants.)	EXCLUDE GANG EXPERT EVIDENCE

The United States respectfully submits this Compendium of Authorities cited in Government's Consolidated Opposition to Defendant Henry Cervantes and Alberto Larez's Motions to Limit or Exclude Gang Expert Evidence (doc. 785).

Dated: November 17, 2015

Respectfully submitted,
BRIAN J. STRETCH
Acting United States Attorney

/s/ Joseph M. Alioto Jr.
Joseph M. Alioto, Jr.
Assistant United States Attorney

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- Ex. B *United States v. Cyrus*, 05-CR-0324-MMC (N.D. Cal. Mar. 25-26, 2009) (gang expert testimony included opinions that certain criminal acts – including “shoot[ing] someone who was a known, cooperating federal witness,” or “shooting somebody who was messing around with another gang member’s girlfriend” – would enhance a gang member’s reputation and standing within the gang).
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Exhibit A

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

-----X
UNITED STATES OF AMERICA,

-against-

DAVID VASQUEZ and LEDWIN CASTRO,

Defendants.
-----X

**MEMORANDUM OF
DECISION AND ORDER**
03-CR-851 (ADS)

APPEARANCES:

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SPATT, District Judge.

Defendant Ledwin Castro (“Castro”) has moved for an order directing the Government to provide: (1) the bases for FBI Special Agent Reynaldo Tariche’s anticipated expert testimony; (2) the identities of individuals related to three homicides allegedly committed pursuant to the charged racketeering enterprise; and (3) any additional documents that the Government intends to use in its case-in-chief at least 30 days prior to trial. Also pending before the Court are motions by the Government and Nassau County, a non-party in this action, to quash a subpoena seeking the production of documents pertaining to the above-mentioned homicides.

I. BACKGROUND

Castro and his co-Defendant David Vasquez (“Vasquez”) (collectively “the Defendants”) are charged with conspiracy to commit assault with a dangerous weapon in aid of racketeering activity, 18 U.S.C. § 1959(a)(6), assault with a dangerous weapon in aid of racketeering activity, 18 U.S.C. § 1959(a)(3), and the discharge of a firearm during a crime of violence, 18 U.S.C. § 924(c)(1). These charges stem from the Defendants’ alleged participation in two drive-by shootings in Nassau County on June 18, 2003.

A. The Drive-By Shootings

The Defendants are both admitted members of MS-13, a nationwide criminal gang organized into local subunits referred to as “cliques.” Vasquez was a member of a Long Island clique headed by Castro known as the Freeport Locos Salvatruchas.

The evidence at the first trial showed that, on the night of the shootings, the Defendants and two other MS-13 gang members, Ralph Admettre and Nieves Argueta, drove to a laundromat in Hempstead to search for members of SWP, a rival gang. From a van parked in a gas station parking lot across the street, Vasquez opened fire on a crowd outside the laundromat, wounding Ricardo Ramirez and Douglas Sorto.

Less than an hour later, the Defendants, Admettre and Nieves traveled to a delicatessen in Freeport where they encountered a group of young black men that they believed to be members of the Bloods, another rival gang. At Vasquez's urging, Nieves shot Carlton Alexander seven times in the back. Despite being struck by multiple gunshots, Alexander survived. The Defendants, Admettre and Nieves were arrested by the Nassau County Police Department approximately one month after the shootings.

B. The Indictment and Trial

On June 23, 2005, a federal grand jury returned a superseding indictment against six MS-13 members including, among others, the Defendants, Admettre and Nieves. Prior to trial, United States District Judge Leonard Wexler severed the charges against Castro and Vasquez from the charges against several of their co-Defendants. The Defendants' remaining co-defendants pleaded guilty to assault and

Admettre pleaded to the conspiracy charge and to using a firearm during a crime of violence. However, Castro and Vasquez proceeded to trial on July 19, 2005.

At the trial, the Government called Hector Alicea, an officer with the New York State Police, to provide expert testimony with regard to MS-13. In particular, Alicea testified to MS-13's history, structure, and modes of communication. The Government also called the three shooting victims, Admettre, and another co-defendant to testify against the Defendants. In addition, the Government offered into evidence telephone records, the gun used in the shootings, ballistics reports, and the Defendants' post-arrest confessions. On July 26, 2005, a jury found both of the Defendants guilty on all counts.

C. The Decision of the Second Circuit

On October 6, 2008, the Second Circuit vacated the Defendants' convictions and remanded the case to the District Court finding that Alicea's testimony violated the Confrontation Clause of the Sixth Amendment and Fed. R. Evid. 703 because Alicea had taken out of court statements obtained from MS-13 members during custodial interrogations and conveyed the substance of those statements to the jury. United States v. Mejia, 545 F.3d 179, 199 (2d Cir. 2008). The Court concluded that, under the circumstances, Alicea was "simply summarizing an investigation by others that [was] not part of the record and presenting it in the guise of an expert opinion." Id. (internal quotation marks and citations omitted). The Court found that admitting

Alicea's testimony was not harmless error because his testimony beared heavily on the material issues of whether MS-13 was an enterprise and whether the gang had engaged in acts and threats of murder. *Id.* at 200.

D. The Re-Trial of the Defendants

At the re-trial, the Government will be required to prove, among other things, that MS-13 was a racketeering enterprise within the meaning of 18 U.S.C. § 1959(b)(1) and 18 U.S.C. § 1961(1). In particular, the Government will have to show that MS-13 was involved in acts and threats of murder. To that end, the Government intends to prove that MS-13 members planned and carried out the homicides of Damian Corrente, Jaime Figueroa, and Dagoberto Ramos, prior to committing the assaults charged in this case. In order to establish that MS-13 is a racketeering enterprise, the Government will also rely, at least in part, on the expert testimony of FBI Special Agent Reynaldo Tariche.

II. DISCUSSION

A. The Motions to Quash

Fed. R. Crim. P. 17(c)(1) provides, in pertinent part, that a "subpoena may order the witness to produce any books, papers, documents, data, or other objects the subpoena designates." Under Rule 17(c)(2), courts enjoy the discretion to quash or modify a subpoena where "compliance would be unreasonable or oppressive."

On April 3, 2009, counsel for Castro served a subpoena on the Nassau County Police Department, seeking any and all records, including witness statements, that pertained to the homicides of Damian Corrente and Jaime Figueroa. At oral argument on these motions, counsel for Castro expanded his request to include any and all records pertaining to the homicide of Dagoberto Ramos. Nassau County has moved to quash that portion of the subpoena which seeks witness statements on the ground that such a request is prohibited by Rule 17(h). Nassau County has also sought to quash that portion of the subpoena which requests documents related to the Corrente homicide on the ground that these materials are protected by the law enforcement privilege.

The Government has moved to quash the subpoena in its entirety. In particular, the Government contends that the subpoena requests privileged information and, in any event, fails to meet the requirements of Rule 17. With respect to the Government's motion, Castro contends, as a preliminary matter, that the Government lacks standing to quash a subpoena served on a third-party.

1. Whether the Government Has Standing

The Court must determine, as a threshold matter, whether the Government has standing to challenge Castro's subpoena. Generally, "a party whose legitimate interests are affected by a subpoena may move to quash that subpoena." United States v. Nektalov, 2004 WL 1574721, at *1 (S.D.N.Y. 2004) (collecting cases). One

important question that Courts have considered in deciding the issue of standing is “whether the subpoenaed party joins in the Government’s motion to quash.” Id. (collecting cases).

Here, the Court finds that the Government has standing to challenge the subpoena because, at least in part, Nassau has joined in their application and the Government has a legitimate interest in preventing Castro from using a subpoena to obtain discovery materials that would otherwise be protected from disclosure. See United States v. Louis, 2005 WL 180885, at *5 (S.D.N.Y. Jan. 27, 2005) (finding that the Government had standing to quash a subpoena served on the Port Authority where, among other things, the federal prosecution arose out of a Port Authority investigation and the Port Authority joined the Government in seeking to quash the subpoena).

The Court also notes that, regardless of the parties’ standing, the Court has an independent duty to review the propriety of the subpoena - a duty in this case that requires the Court to consider whether the documents sought are privileged and whether the subpoena itself comports with the requirements of Rule 17. See United States v. Khan, 2009 WL 152582, at *6 (E.D.N.Y. Jan. 20, 2009) (citing United States v. Weissman, 2002 WL 31875410, at *1 n. 1 (S.D.N.Y. Dec. 26, 2002)) (noting that “[r]egardless of the government’s standing, the court has a duty to ensure that subpoenas are issued only for proper purposes and that they are in compliance with Rule 17.”).

2. Whether the Subpoena Comports with the Requirements of Rule 17

Both the Government and Nassau County challenge whether Castro's subpoena comports with the requirements of Rule 17. In order to address this issue, a brief review of the interplay between Rules 16 and 17 of the Federal Rules of Criminal Procedure is necessary.

Pre-trial discovery in criminal cases is largely governed by Rule 16. Louis, 2005 WL 180885, at *2. Courts have been careful to point out that Rule 17(c), by contrast, should not be construed as a broad discovery device. See United States v. Cherry, 876 F. Supp. 547, 552 (S.D.N.Y. 1995) (citing United States v. Marchisio, 344 F.2d 653, 669 (2d Cir. 1965)). However, Rule 17(c) does permit a defendant to obtain *evidentiary* material prior to trial. See United States v. RW Professional Leasing Services Corp., 228 F.R.D. 158, 161 (E.D.N.Y. 2005) (citing United States v. Nixon, 418 U.S. 683, 698-99, 94 S. Ct. 3090, 41 L. Ed. 2d 1039 (1974)) (observing that "[t]he purpose of rule 17(c) is not to facilitate discovery, but to enable a party to obtain and inspect evidentiary material prior to trial."). The Court "assesses and controls the extent to which [Rule 17] is used in a good-faith effort to obtain evidence 'by its power to rule on motions to quash and modify.'" Louis, 2005 WL 180885, at *3 (quoting Bowman Dairy Co v. United States, 341 U.S. 214, 219, 71 S. Ct. 675, 95 L. Ed. 879 (1951)).

In deciding whether to quash or modify a subpoena, courts are guided by the factors set forth in United States v. Nixon, 418 U.S. 683, 94 S. Ct. 3090; 41 L. Ed. 2d 1039 (1974). Under the Nixon factors, a party seeking the production of the documents must demonstrate that the materials are: (1) relevant; (2) admissible; (3) specifically identified; and (4) not otherwise procurable. Id. at 699-670. “In order to meet its burden, the proponent has to show that the documents sought are both relevant and admissible at the time of the attempted procurement.” RW Professional Leasing Services Corp., 228 F.R.D. at 162 (citing United States v. Marchisio, 344 F.2d 653, 669 (2d Cir. 1965), and United States v. Jenkins, 2003 WL 1461477, at *4 (S.D.N.Y. Mar. 21, 2003)).

First, the documents sought here by Castro are relevant. The Government has acknowledged that in order to show that MS-13 is a racketeering enterprise, it intends to prove that its members carried out the Corrente, Figueroa, and Ramos homicides. The subpoena seeks information about these homicides that would shed light on the dispositive issue of whether MS-13 had any role in these crimes. Second, the Court is satisfied that some of the documents requested—police reports, reports of scientific evaluations, criminal records, and case worksheets—may be admissible at trial. However, Castro has failed to carry his burden to show that the requested witness statements would be admissible at trial. See Cherry, 876 F. Supp. 547, 553 (S.D.N.Y. 1995) (citing Marchisio, 344 F.2d at 669) (“In this respect, Rule 17(c) can be

contrasted with the civil rules which permit the issuance of subpoenas to seek production of documents or other materials which, although not themselves admissible, could lead to admissible evidence.”). Moreover, if the statements sought were made by individuals the Government intends to call as witnesses at the trial, then even if they were admissible Castro would still not be entitled to them now because Rule 17(h) expressly precludes a party from subpoenaing a witness statement. Accordingly, the motions to quash Castro’s request for witness statements are granted.

With respect to the third Nixon factor, the Court finds that Castro’s subpoena identifies the documents sought with sufficient particularity. See RW Professional Leasing Services Corp., 228 F.R.D. at 162 (“When determining whether a request for documents is specifically identified, the proponent must show that the subpoena is being used to obtain relevant evidence and not merely as a ‘fishing expedition’ to expand discovery.”). Here, Castro has confined his request to documents pertaining only to the three homicides that are central to the Government’s case. See id. (citing In re Grand Jury Subpeona, 1992 WL 142014, at *7 (E.D.N.Y. 1992)) (observing that a “request is generally sufficiently specific where it limits documents to a reasonable period of time and states with reasonable particularity the subjects to which the documents relate.”). Finally, these documents are not otherwise procurable without a

subpoena because they are in the sole possession of the Nassau County Police Department.

Although Castro has satisfied the Nixon factors and therefore shown that his subpoena comports, at least in part, with the requirements of Rule 17, the Court must still determine whether the documents sought are nevertheless subject to the law enforcement privilege.

3. Whether the Law Enforcement Privilege Applies

The purpose of the law enforcement privilege is “to prevent disclosure of law enforcement techniques and procedures, to preserve the confidentiality of sources, to protect witness and law enforcement personnel, to safeguard the privacy of individuals involved in an investigation, and otherwise to prevent interference with an investigation.” In re Dep’t of Investigation of City of New York, 856 F.2d 481, 484 (2d Cir. 1988). It is settled law that in asserting the law enforcement privilege, a party carries the burden to set forth “those facts that are the essential elements of the privileged relationship.” In re Grand Jury Subpoena Dated Jan. 4, 1984, 750 F.2d 223, 224-25 (2d Cir. 1984).

Here, Nassau County claims that the documents sought in connection with the Corrente homicide are subject to the law enforcement privilege because, among other reasons, this case is still the subject of an open investigation. In particular, Nassau County contends that producing these documents would expose law enforcement

techniques used in the investigation, deter witnesses from cooperating, and expose confidential sources. Nassau County also notes that Castro's request is particularly inappropriate because he has already received, among other materials, autopsy reports, ballistics reports, and post-arrest statements relating to the Corrente homicide through Rule 16 discovery. Although Nassau County has indicated its willingness to produce documents related to the Figueroa and Ramos homicides, the Government appears to contend that the law enforcement privilege also applies to these materials.

The Court declines to adopt a per se rule that a subpoena may not issue for documents contained in the files of an ongoing police investigation. However, Nassau County has offered several compelling reasons why certain documents in the Corrente homicide file are subject to the law enforcement privilege. Although Nassau County appears not to be concerned that producing the Figueroa and Ramos documents carries the same risks, the Government argues—and the Court recognizes—that the privilege may apply to these documents as well. However, given that these documents could play an important role in Castro's defense, the Court finds it appropriate to conduct an in camera review to determine which of these documents, if any, are privileged. Accordingly, Nassau County is directed to provide the Court with any documents in the Corrente, Figueroa, and Ramos homicide files that are responsive to Castro's subpoena. The motions to quash are held in abeyance until the Court has had an opportunity to conduct an in camera review.

B. Castro's Discovery Motion

Castro has moved for an order directing the Government to provide: (1) the bases for FBI Special Agent Reynaldo Tariche's anticipated expert testimony; (2) the identities of witnesses related to the Corrente, Figueroa, and Ramos homicides; and (3) any additional documents that the Government intends to use in its case-in-chief at least 30 days prior to trial. The Court will address each of these requests in turn.

1. Expert Disclosures

Rule 16(a)(1)(G) requires the Government to produce a written summary of expert testimony that it intends to offer during its case-in-chief. In particular, the Rule provides that this summary "must describe the witness's opinions, the bases and reasons for those opinions, and the witness's qualifications." The Second Circuit has explained that expert disclosure "is intended to minimize [the] surprise that often results from unexpected testimony, reduce the need for continuances, and to provide the opponent with a fair opportunity to test the merit of the expert's testimony through focused cross-examination." United States v. Cruz, 363 F.3d 187, 196 n.1 (2d Cir. 2004) (quoting United States v. Figueroa-Lopez, 125 F.3d 1241, 1246 (9th Cir. 1997)).

Here, the Government indicates that Special Agent Tariche will testify that:

(1) MS-13 is a street gang that originated in Central America and later spread throughout the United States with members largely of Central American descent; (2) MS-13 is divided into subunits referred to as cliques and that members hold clique and inter-clique meetings referred to as “universals”; (3) MS-13 members use certain handsigns and wear blue and white to signify membership; (4) MS-13 members communicate primarily in Spanish; (5) MS-13 has cliques on Long Island who have violent rivalries with other Long Island gangs; and (6) within MS-13, the word “chevala” is a derogatory term for a rival gang member. Castro is satisfied that the Government has adequately set forth Tariche’s qualifications and the substance of his putative testimony. However, Castro contends that the Government has failed to offer the bases and reasons for his conclusions. The Court disagrees.

In two letters, dated January 22, 2009 and April 1, 2009, the Government explained that Tariche has analyzed and relied upon various sources during the course of his career—information obtained at conferences, surveillance, MS-13 literature, interviews with gang members and victims—in reaching the conclusions he will present to the jury. Under the circumstances, this description of the bases for Tariche’s testimony is sufficient. The conclusions Tariche has drawn about MS-13 are the product of a 19-year career in law enforcement not a particular set of documents that can be readily produced. The information the Government has

provided to Castro regarding the bases for Tariche's testimony is sufficient to give Castro a fair and adequate opportunity to challenge Tariche's expert testimony in a Daubert motion. 509 U.S. 579 (1993). Accordingly, Castro's motion for an order directing the Government to provide more details about the bases of Tariche's expert testimony is denied.

2. The Identities of Individuals Related to the Corrente, Figueroa and Ramos Homicides

Castro contends that the Government has failed to disclose the identities and whereabouts of witnesses related to the Corrente, Figueroa, and Ramos homicides. Castro seeks an order compelling the Government to provide unredacted copies of discovery materials already provided so that he can determine the identities of these witnesses. In particular, Castro requests that the Court order the Government to unredact: (1) the name of the individual who was driving Figueroa when he was shot; (2) the names of three MS-13 gang members who were arrested for possession of the Figueroa murder weapon; (3) the name and home address of the mother of Herbert Chacon, a member of MS-13; and (4) the home address of Chacon's co-defendant, Pedro Rosales.

The parties acknowledge that Rule 16 neither authorizes nor forbids the disclosure of witness identities. See United States v. Bejasa, 904 F.3d 137, 139 (2d Cir. 1990) (noting that Rule 16 does not require the Government to provides the names and addresses of its witnesses). However, Castro requests that the Court

exercise its discretion to compel such disclosure. See United States v. Cannone, 528 F.2d 296 (2d Cir. 1975) (holding that the District Court has the discretion to compel the Government to disclose the identities of witnesses the Government intends to call at trial). Castro contends that learning the identities and whereabouts of these individuals is essential to his trial preparation and will allow him to develop evidence relating to whether the homicides were part of the charged RICO enterprise.

It is not evident to the Court whether the Government even intends to call these individuals at the trial. The Court notes that they were not called at the first trial. Should they call these individuals as witnesses at the trial, the Government has assured both Castro and the Court that it will disclose their identities in advance of the trial. However, even if the Court assumes that the Government will call each of these individuals as witnesses at the trial, Castro has still failed to convince the Court that disclosure of their identities is necessary at this stage.

In Roviaro v. United States, 353 U.S. 53, 60-61, 77 S. Ct. 623, 1 L. Ed. 2d 639 (1957), the Supreme Court held that “[w]here the disclosure of an informant’s identity . . . is relevant and helpful to the defense of an accused, or is essential to the fair determination of a cause, the [informant’s] privilege must give way.” The Court elaborated that in weighing whether an informant’s identity should be revealed in advance of trial, courts should “[balance] the public interest in protecting the flow of information against the individual’s right to prepare his defense.” Id. at 62. In

balancing these competing interests, courts may consider “the crime charged, the possible defenses, the possible significance of the informer's testimony, and other relevant factors.” United States v. Jackson, 345 F.3d 59, 70 (2d Cir. 2003) (quoting Roviaro, 353 U.S. at 62). Generally, a defendant is able to establish that disclosure is proper where the defendant shows that “‘informant is a key witness or participant in the crime charged, someone whose testimony would be significant in determining guilt or innocence.’” United States v. Saa, 859 F.2d 1067, 1073 (2d Cir. 1988) (quoting United States v. Russotti, 746 F.2d 945, 950 (2d Cir. 1984)).

As noted above, it is not clear to the Court that any of the individuals whose identities Castro seeks will be witnesses at the trial. Indeed, it is not even clear that all of these individuals may be properly characterized as informants. In any event, Castro has made an insufficient showing that they would be key witnesses or that their putative testimony would be significant in determining Castro's guilt. On the other hand, given the nature of the crimes charged and the fact that the Defendants are admitted members of a violent gang, the Court perceives a genuine risk in requiring the present disclosure of these individuals' identities and locations.

Under the circumstances of this case, the conclusory argument that Castro needs the identities of these individuals in order to prepare for trial is not sufficient. See United States v. Flaharty, 295 F.3d 182, 202 (2d Cir. 2002) (quoting United States v. Fields, 113 F.3d 313, 324 (2d Cir. 1997)) (“Speculation that disclosure of the

informant's identity will be of assistance is not sufficient to meet the defendant's burden.”); Cannone, 528 F.2d 296 (2d Cir. 1975) (refusing to order the Government to disclose the identities of trial witnesses where the defendant offered only a conclusory claim that such disclosure was necessary for the defense’s trial preparation).

Accordingly, Castro’s motion for an order directing the Government to presently disclose the identities and whereabouts of individuals related to the Corrente, Figueroa, or Ramos homicides is denied.

3. Discovery Deadline

Castro is already in possession of all Rule 16, Brady, Giglio, and Jencks Act, 18 U.S.C. § 3500, materials from the original trial. However, because the Government intends to offer new evidence related to the Corrente, Figueroa, and Ramos homicides, Castro moves for an order directing the Government to provide any additional documents that it intends to use in its case-in-chief or any documents material to the Defendants’ trial preparation at least thirty days prior to the trial. Castro also appears to request the production of any new Brady material within the same timeframe.

“The overwhelming majority of district courts, in accord with Second Circuit authority, favor the view that ‘it is within a district court’s authority to direct the Government to identify [prior to trial] the documents it intends to rely on in its case in chief.’” United States v. Vilar, 530 F. Supp. 2d 616, 639 (S.D.N.Y. 2008) (quoting

United States v. Giffen, 379 F. Supp. 2d 337, 344 (S.D.N.Y. 2004)). Here, with four months until the scheduled trial date of September 14, 2009, the Government acknowledges that discovery is already largely complete with respect to any new materials pertaining to the Corrente, Figueroa, and Ramos homicides. Under the circumstances, the Court sees no reason for the Government not to produce and identify all the documents it intends to use in its case-in-chief at least 30 days in advance of trial.

To the extent that the Government has already uncovered new Brady material, it should also be disclosed at least 30 days prior to the trial. See United States v. Coppa, 267 F.3d 132, 144 (2d Cir. 2001) (holding that due process requires the Government to disclose Brady materials in time for its effective use at trial). Of course, this order should not be understood to exclude the admission of any evidence that the Government obtains after the discovery deadline, provided the Government promptly discloses such evidence to the Defendants.

III. CONCLUSION

The motions by Nassau County and the Government to quash that portion of Castro's subpoena seeking statements by witnesses to the Corrente and Figueroa homicides are **GRANTED**.

Nassau County is directed to provide the Court with any and all documents in the Corrente, Figueroa, and Ramos homicide files that are

responsive to Castro's subpoena, within ten days of the date of this Order, so that the Court may conduct an in camera review of those documents to determine whether they are protected by the law enforcement privilege.

Castro's motion for additional information pertaining to the bases for Tariche's expert testimony is **DENIED**.

Castro's request for an order compelling the Government to immediately disclose the identities and whereabouts of individuals related to the Corrente, Figueroa, and Ramos homicides is **DENIED**.

The Government is directed to disclose any Brady material and all documents it intends to use in its case-in-chief at least 30 days prior to the trial.

SO ORDERED.

Dated: Central Islip, New York
May 20, 2009

Arthur D. Spatt
Arthur D. Spatt
United States District Judge

Exhibit B

VOLUME 30

PAGES 6218 - 6421

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MAXINE M. CHESNEY

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. CR 05-0324 MMC
)	
DENNIS CYRUS, JR.)	
)	SAN FRANCISCO, CALIFORNIA
DEFENDANT.)	WEDNESDAY, MARCH 25, 2009
)	

TRANSCRIPT OF PROCEEDINGS

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KATHERINE WYATT, CSR, RMR
OFFICIAL REPORTER, U.S. DISTRICT COURT

PEAGLER - DIRECT/REES

1 A. IN MY OPINION, IN MY EXPERIENCE THESE ARE THE ONLY
2 LOCATIONS, THE ECONOMICALLY-DEPRESSED POCKETS, OR PUBLIC
3 HOUSING AREAS OF SAN FRANCISCO ARE THE ONLY AREAS THAT I HAVE
4 OBSERVED BLACK STREET GANGS OPERATE, IF THAT'S YOUR QUESTION.

5 Q. OKAY. AND JUST TO GET SOMETHING CLEAR, IS EVERYBODY WHO
6 LIVES IN ONE OF THESE LOW INCOME HOUSING PROJECTS PART OF A
7 GANG, STREET GANG THAT MIGHT BE ASSOCIATED WITH THAT HOUSING
8 COMPLEX?

9 A. ABSOLUTELY NOT. THE MAJORITY ARE NOT INVOLVED.

10 Q. I GUESS WE'VE ALREADY ESTABLISHED THIS, BUT DO THE GANGS
11 THEMSELVES, THOUGH, TEND TO BE ASSOCIATED WITH A PARTICULAR
12 HOUSING AREA OR A LOW INCOME OR COOPERATIVE AREA?

13 A. YES, THOSE AREAS IN MY EXPERIENCE ARE GANG TURF, WHAT YOU
14 WOULD CALL GANG TERRITORY, YES.

15 Q. NOW, YOU JUST MENTIONED THE TERMS "TURF" AND "TERRITORY."
16 ARE STREET GANGS, IN YOUR OPINION, SUCH AS PAGE STREET GANG,
17 ARE TERRITORIAL?

18 A. YES. AND I'M RESTRICTED TO, I BELIEVE, SAN FRANCISCO. BUT
19 MY KNOWLEDGE GOES BEYOND SAN FRANCISCO. BUT IN SAN FRANCISCO
20 THEY ARE, AND OUTSIDE OF SAN FRANCISCO THEY ARE.

21 Q. WELL, LET'S JUST STAY LIMITED TO STREET GANGS IN SAN
22 FRANCISCO. YOUR OPINION IS IS THAT THEY TEND TO BE TERRITORIAL;
23 IS THAT WHAT YOU'RE SAYING?

24 A. YES.

25 Q. OKAY. AND DO THEY REGARD THEIR TERRITORY AS A TURF, FOR

KATHERINE WYATT, OFFICIAL REPORTER, CSR, RMR (925) 212-5224

PEAGLER - DIRECT/REES

1 EXAMPLE?

2 A. YES.

3 Q. AND IS IT SOMETHING TO BE PROTECTED?

4 A. YES.

5 Q. LET'S MOVE ON TO, I GUESS, MAYBE GENERAL PRINCIPLES OF
6 THESE STREET GANGS, SUCH AS PAGE STREET GANG THAT YOU'RE
7 OFFERING OPINION ON.

8 IN YOUR OPINION, DO THESE TYPES OF STREET GANGS
9 OPERATE UNDER A KIND OF A COMMON SET OF PRINCIPLES OR A
10 PHILOSOPHY?

11 A. YES.

12 Q. WHAT WOULD BE THE MAIN TENETS OF SUCH A PHILOSOPHY, OR
13 OPERATING PHILOSOPHY PRINCIPLES?

14 A. SOME OF THE MAIN TENETS WOULD BE THAT A MEMBER, A STREET
15 GANG MEMBER OR RELATED ASSOCIATE MUST BE RESPECTED, GUARD AND
16 CONTINUOUSLY MAINTAIN A RESPECT IN THE EYES OF -- PRETTY MUCH
17 IN THE EYES OF HIS PEERS AND OTHERS.

18 THERE'S A PHILOSOPHY OF YOU MUST MAINTAIN AND HAVE A
19 REPUTATION, A STREET REPUTATION. AND MOST OF THE TIME THAT
20 REPUTATION, IN MY OPINION, IS ENHANCED THROUGH VIOLENCE AND
21 THERE'S -- IF -- THE PHILOSOPHY IS REVENGE.

22 IF YOUR REPUTATION OR THAT REPUTATION OF THAT GANG
23 REPUTATION OR YOU'RE DISRESPECTED, REVENGE MUST BE EXACTED.
24 THAT'S A PHILOSOPHY OR A PRINCIPLE, IF YOU WILL.

25 IT WAS ALREADY MENTIONED EARLIER, THE CODE OF

PEAGLER - DIRECT/REES

1 SILENCE. BASICALLY, NEVER EVER COOPERATE WITH LAW ENFORCEMENT,
2 LAW ENFORCEMENT INVESTIGATIONS, WITH THE EXCEPTION OF, WHICH
3 WE'RE ALL AWARE, IS IF ALLEGATIONS OF MISCONDUCT BY LAW
4 ENFORCEMENT OFFICIALS OR CRIMINAL ACTS BY LAW ENFORCEMENT
5 OFFICIALS, THERE'S NO PROBLEM WITH BREAKING THAT CODE UNDER
6 THOSE SET OF CIRCUMSTANCES.

7 Q. RESPECT, REPUTATION, REVENGE AND A CODE OF SILENCE. IS
8 THAT YOUR TESTIMONY OF THE MAIN FOUR OPERATING PRINCIPLES OF
9 STREET GANGS, SUCH AS PAGE STREET GANG IN SAN FRANCISCO?

10 A. THOSE WOULD BE FOUR, YES.

11 Q. LET'S GET INTO SOME SPECIFICS ABOUT THESE PRINCIPLES AND
12 HOW THEY ACTUALLY TRANSLATE INTO SPECIFIC ACTION BY MEMBERS OF
13 STREET GANGS IN SAN FRANCISCO.

14 YOU FIRST MENTIONED RESPECT. CAN YOU GIVE US SOME
15 INSIGHT INTO HOW AN EFFORT TO GAIN RESPECT OR AVOID DISRESPECT
16 ACTUALLY TRANSLATES INTO A GANG MEMBER'S ACTIONS ON THE STREET?

17 MR. PHILIPSBORN: OBJECTION, YOUR HONOR. I THINK THE
18 FOUNDATION WAS LAID SO AS TO COMPLY WITH COURT'S DIRECTIVE, BUT
19 NOW, I MEAN, THIS IS JUST SAYING IN GENERAL.

20 THE COURT: WELL, LET ME TAKE A LOOK AT THE QUESTION.

21 MR. PHILIPSBORN: OBJECTION, RELEVANCE AND 403.

22 THE COURT: I THINK I HAVE TO ASK THE REPORTER.
23 THAT'S ONE OF THOSE QUESTIONS I CAN'T READ WITHOUT ASKING THE
24 REPORTER.

25 (THEREUPON, THE RECORD WAS READ BACK AS FOLLOWS:

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PEAGLER - DIRECT/REES

1 A. ABSOLUTELY, YES.

2 Q. FOR EXAMPLE, CAN EXACTING REVENGE ENHANCE A REPUTATION?

3 A. YES.

4 Q. LET'S NOW MOVE ON TO THE LAST KIND OF GUIDING PRINCIPLE
5 YOU TALKED ABOUT, THIS CODE OF SILENCE. HOW DOES THAT WORK IN
6 PRACTICE?

7 A. WELL, THE CODE OF SILENCE, IT'S NOT A NEW PHENOMENON. YOU
8 JUST DO NOT COOPERATE WITH LAW ENFORCEMENT. IT COULD -- THE
9 EASY WAY TO DESCRIBE IT IS THERE'S A HIERARCHY ON THE STREETS
10 OR IN THE GANG LIFESTYLE. THE TOP OF THAT HIERARCHY IS GOING
11 TO BE YOUR KILLER, YOUR COP KILLER. AT THE BOTTOM OF THAT IS
12 GOING TO BE YOUR CRACK ADDICT AND YOUR SNITCH.

13 THAT'S NOT A PHRASE I NORMALLY USE. IT'S A COMMONLY
14 UNDERSTOOD PHRASE. BUT IT'S INFORMANTS, SOURCES. SO THAT'S
15 PRETTY MUCH MY ANSWER.

16 Q. AND JUST TO GIVE A LITTLE BIT MORE DETAIL, WHAT IS A
17 SNITCH?

18 A. SNITCH IS AN INFORMANT, POLICE. WHEN I FIRST CAME IN ONE
19 OF THE -- I ASKED A MENTOR OF MINE:

20 "HOW DO I BE A GOOD COP OR A GOOD CORRECTIONAL
21 OFFICER, A GOOD DEPUTY?"

22 AND THE ANSWER WAS:

23 "YOU MUST HAVE INFORMANTS."

24 TO UNDERSTAND, TO GET INFORMATION, TO INVESTIGATE
25 CASES YOU HAVE TO HAVE INFORMANTS.

KATHERINE WYATT, OFFICIAL REPORTER, CSR, RMR (925) 212-5224

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE MAXINE M. CHESNEY

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	
)	
VS.)	NO. CR 05-0324 MMC
)	
DENNIS CYRUS, JR.)	
)	SAN FRANCISCO, CALIFORNIA
DEFENDANT.)	THURSDAY, MARCH 26, 2009
)	

TRANSCRIPT OF PROCEEDINGS

APPEARANCES:

FOR THE GOVERNMENT: JOSEPH P. RUSSONIELLO
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BY: WILLIAM FRENTZEN, ESQUIRE
ROBERT DAVID REES, ESQUIRE

FOR THE DEFENDANT: LAW OFFICES OF JAMES S. THOMSON
819 DELAWARE STREET
BERKELEY, CALIFORNIA 94710
BY: JAMES S. THOMSON, ESQUIRE

LAW OFFICES OF JOHN T. PHILIPSBORN
507 POLK STREET, SUITE 350
SAN FRANCISCO, CALIFORNIA 94102
BY: JOHN T. PHILIPSBORN, ESQUIRE

(FURTHER APPEARANCE ON FOLLOWING PAGE)

REPORTED BY: JOAN MARIE COLUMBINI, CSR, RPR
KATHERINE WYATT, CSR, RMR
OFFICIAL COURT REPORTERS, U.S. DISTRICT COURT

BRIAN PEAGLER

HAVING BEEN CALLED AS A WITNESS BY THE GOVERNMENT WAS
PREVIOUSLY DULY SWORN AND EXAMINED FURTHER AS FOLLOWS:

MR. REES: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION BY MR. REES (RESUMED)

BY MR. REES

Q YESTERDAY, INSPECTOR PEAGLER, WE TALKED ABOUT RESPECT,
REPUTATION, REVENGE, AND THE CODE OF SILENCE, AND HOW THOSE
GENERAL PRINCIPLES AFFECT AND MOTIVATE STREET GANGS IN SAN
FRANCISCO SUCH AS THE ONE YOU'VE IDENTIFIED AS PAGE STREET GANG.
I'D LIKE NOW TO TURN TO SOME OF THE ACTUAL ACTIVITIES OF THE
GANG AS A GROUP.

WHAT, IF ANYTHING, DOES A PARTICULAR STREET GANG IN
SAN FRANCISCO DO AS A GROUP?

A AS A GROUP STREET GANG, PRIMARILY, TRAFFICKING NARCOTICS IS,
IN MY EXPERIENCE, IS THE MAIN TASK OF BLACK STREET GANGS IN SAN
FRANCISCO.

Q AND THE STREET GANGS THAT WE HAVE BEEN TALKING ABOUT, IS A
COMMON PURPOSE TO TRAFFIC IN NARCOTICS IN A PARTICULAR AREA?

A YES.

Q CAN YOU DESCRIBE THAT?

A WELL, THE STREET GANGS -- EXCUSE ME, PARTICULARLY PAGE
STREET, THEY TRAFFIC THEIR NARCOTICS ON THEIR TURF. IN MY
EXPERIENCE, NO ONE WHO IS -- IF YOU'RE NOT AFFILIATED OR RELATED
OR ASSOCIATED WITH THAT GROUP, YOU DO NOT TRAFFIC NARCOTICS IN

1 THAT AREA THAT WE DISCUSSED YESTERDAY.

2 Q AND AS A GROUP, IF SOMEBODY DID ATTEMPT TO TAKE -- TO SELL
3 NARCOTICS IN THEIR TURF, WOULD MEMBERS OF A STREET GANG IN SAN
4 FRANCISCO TAKE SOME COORDINATED ACTION WITH RESPECT TO THAT?

5 A YES.

6 Q WHAT WOULD THAT BE?

7 A WELL, I'VE ACTUALLY TESTED THAT MYSELF IN ACTUALITY, WAS
8 WORKING AS AN UNDERCOVER, AND COMING ON TURF AND STANDING THERE.
9 AND, ACTUALLY, WHAT HAPPENS IS YOU GET APPROACHED, THEY'LL ASK
10 YOU WHAT ARE YOU DOING HERE, AND ESSENTIALLY TELL YOU, GET OFF
11 THIS BLOCK. AND, NORMALLY, IT WOULD BE MORE THAN ONE PERSON.

12 Q WITH RESPECT TO NARCOTICS TRAFFICKING, IS THERE ANY SHARING
13 OF THE PROFITS GENERALLY WITH THE STREET GANGS THAT WE HAVE BEEN
14 DISCUSSING?

15 A WELL, NOT IN AS WE WOULD SEE, WELL, WE'VE MADE THIS PROFIT
16 FROM THIS AMOUNT OF NARCOTICS, AND, HERE, LET'S EQUALLY SHARE
17 THIS MONEY.

18 THE MONEY IS SHARED IN VARIOUS WAYS. IT CAN BE
19 SHARED BY -- IF AN INDIVIDUAL IS INCARCERATED, THEY COULD GET
20 TOGETHER BAIL MONEY FOR THAT INDIVIDUAL. IF AN INDIVIDUAL IS
21 INCARCERATED, MONEY COULD BE PUT ON THAT INDIVIDUAL'S BOOKS.
22 THEY CAN GO BUY FOOD FOR EACH OTHER.

23 YOU KNOW, LIKE WE TALKED ABOUT WITH YOUR REPUTATION.
24 IF YOUR SHOES AREN'T RIGHT, THEY MIGHT GET TOGETHER, HERE'S SOME
25 MONEY FOR THOSE SHOES. AS WE ALL KNOW, NIKES ARE VERY EXPENSIVE

1 WOULD IT HELP A GANG MEMBER'S REPUTATION, OR COULD BE
2 PERCEIVED TO HELP THEIR REPUTATION, IF THEY SHOT SOMEBODY WHO
3 REFUSED TO GIVE THEM ACCESS TO THEIR WEAPONS?

4 A. YES. YES.

5 Q. WOULD IT HELP A GANG MEMBER'S REPUTATION, OR COULD IT BE
6 PERCEIVED TO HELP A GANG MEMBER'S REPUTATION TO SHOOT SOMEBODY
7 WHO WAS MESSING AROUND WITH ANOTHER GANG MEMBER'S GIRLFRIEND?

8 A. YES.

9 Q. COULD IT HELP A GANG MEMBER'S REPUTATION, OR COULD IT BE
10 PERCEIVED TO HELP A GANG MEMBER'S REPUTATION, TO SHOOT A PERSON
11 WHO HAD ARGUED WITH THEM AND DISPUTED WITH THEM ABOUT WHAT THE
12 PROPER TURF THAT THEY COULD SELL DRUGS IN WAS?

13 A. YES. NOW, AUDIENCE PLAYS A ROLE IN THAT PERCEPTION. IT WOULD
14 BE BENEFICIAL IF OTHERS WITNESSED IT.

15 Q. IF OTHERS HAD SEEN THIS DISRESPECT?

16 A. YES.

17 Q. WOULD IT HELP A GANG MEMBER'S REPUTATION, OR WOULD IT BE
18 PERCEIVED TO HELP A GANG MEMBER'S REPUTATION, TO SHOOT SOMEONE
19 WHO WAS A KNOWN, COOPERATING FEDERAL WITNESS?

20 A. YES.

21 Q. EVEN IF ANY ONE OF THESE HYPOTHETICALS WASN'T NECESSARILY
22 OVERALL GOOD FOR THE GROUP, COULD IT NONETHELESS BE GOOD FOR THE
23 SHOOTER'S REPUTATION?

24 A. ABSOLUTELY.

25 Q. AND IF A PERSON DIDN'T HAVE ANY PARTICULAR REPUTATION, DO

Exhibit C

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8 **UNITED STATES DISTRICT COURT**
9 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
10

11 **UNITED STATES OF AMERICA,**

12 **Plaintiff(s),**

13 **v.**

14 **6) RONALD BOYD SLOCUM;**
15 **13) WAYNE BRIDGEWATER;**
16 **31) HENRY MICHAEL HOUSTON,**

17 **Defendant(s).**
18
19

CASE NO. CR 02-938 (E) DOC

**ORDER RE: DEFENDANT
HOUSTON'S MOTION TO EXCLUDE
THE GOVERNMENT'S GANG EXPERT
TESTIMONY AND FOR A PRETRIAL
DAUBERT HEARING AS TO THE
ADMISSIBILITY OF SUCH
TESTIMONY**

20 This matter is before the Court on Defendant Houston's Motion to Exclude the
21 Government's Gang Expert Testimony and for a Pretrial Daubert Hearing as to the Admissibility
22 of Such Testimony. On January 26, 2007, the government designated Danine Adams, an
23 employee of the Federal Bureau of Prisons, as an expert witness. *See* Fed. R. Evid. 16(a)(1)(E).
24 The government also indicated that it may later designate additional expert witnesses. Mr.
25 Houston challenges the proffered testimony of Ms. Adams and requests a pretrial hearing to
26 examine the proffered testimony and determine its relevance, reliability, and possible unfair
27 prejudice. After considering all of the papers filed in support of and in opposition to the motion,
28 as well as the oral arguments of the parties, the Court DENIES the motion IN PART, GRANTS

the motion IN PART, and RESERVES ruling IN PART until trial.

I. Standard

Rule 702 of the Federal Rules of Evidence provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Rule 702 imposes a “gatekeeping” obligation on the courts to ensure that expert testimony is relevant and reliable. *See Daubert v. Merrell Dow Pharmaceuticals*, 509 U.S. 579, 589 (1993). This gatekeeping function applies to all types of expert testimony, not simply scientific expert testimony. *See Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-49 (1999). The “admissibility of expert opinion testimony generally turns on the following preliminary question of law determinations by the trial judge under FRE 104(a).

- . Whether the opinion is based on scientific, technical, or other specialized knowledge;
- . Whether the expert's opinion would assist the trier of fact in understanding the evidence or determining a fact in issue;
- . Whether the expert has appropriate qualifications - i.e., some special knowledge, skill, experience, training or education on that subject matter.
- . Whether the methodology or technique the expert uses ‘fits’ the conclusions . . .
- . Whether its probative value is substantially outweighed by the risk of unfair prejudice, confusion of issues, or undue consumption of time.”

United States v. Hankey, 203 F.3d 1160, 1168 (9th Cir. 2000) (internal citations omitted).

II. Request for Pretrial Hearing

Mr. Houston requests that the Court conduct a pretrial hearing to examine the proffered expert testimony in detail and determine its admissibility. However, the Ninth Circuit has

1 expressly held that no such hearing is required. See *United States v. Alatorre*, 222 F.3d 1098,
2 1099 (9th Cir. 2000). In *Alatorre*, the Ninth Circuit upheld the trial court's decision not to hold
3 a pretrial hearing to determine the admissibility of expert testimony. There, the court noted that
4 the trial court had allowed the defense counsel "to question the government's proffered expert at
5 trial, in the presence of the jury, via voir dire." *Id.* Comparing the voir dire conducted during
6 trial with voir dire conducted at a pretrial hearing, the court stated "in terms of the trial court's
7 'gatekeeping' responsibility as to admissibility of this type of experiential expert testimony, we
8 see no significant difference" *Id.* at 1104.

9 Likewise, this Court believes that a pretrial hearing is unnecessary in this case. Counsel
10 for Defendants will be permitted to question the Government's expert witnesses during trial
11 regarding their qualifications and whether their proffered testimony is relevant, reliable, and
12 based on an accepted methodology. Moreover, as Ms. Adams already testified in the trial of Mr.
13 Houston's co-defendants Barry Mills and Tyler Bingham, the parties and the Court have the
14 benefit of knowing much of what Ms. Adams intends to testify to in this trial. As indicated
15 below, the Court has used Ms. Adams prior testimony to define generally what testimony will
16 and will not be admissible in this trial. Therefore, the Court DENIES Mr. Houston's request for
17 a pretrial hearing and RESERVES ruling on the qualifications, relevance, and reliability of the
18 expert witnesses until trial as well as the related issue of prejudice under Federal Rule of
19 Evidence 403.¹

21 ¹At trial, the Court will address Mr. Houston's argument that Ms. Adams does not
22 qualify as an expert since, as he alleges, "[m]ost of her knowledge has come from her
23 own criminal investigation or administrative investigation in this case and not on any
24 particular expertise on the subject," Motion at 7, and because "Adams' methods lack any
25 of the traditional expert techniques in forming or testing hypotheses." Reply at 2.
26 "Under Rule 702, the proffered expert must establish that reliable principles and methods
27 underlie the particular conclusions offered" *United States v. Hermanek*, 289 F.3d
28 1076 (9th Cir. 2002). However, it is worth noting now that, to the extent Mr. Houston's
challenges are to gang or criminal enterprise expert testimony in general, the Ninth
Circuit has upheld the use of such testimony. See *United States v. Valencia-Amezcu*,
278 F.3d 901, 908 (9th Cir. 2002) ("[I]t is commonplace that expert testimony regarding
the structure of criminal enterprises is admissible to help the jury assess a defendant's

1 **III. Allowable Testimony**

2 Though the Court reserves ruling on the exact scope of allowable testimony until defense
3 counsel has questioned the expert witness at trial, some of Mr. Houston's additional arguments
4 can be discussed now.

5 Mr. Houston objects that Ms. Adams will testify as both a fact witness and an expert
6 witness, so that her testimony may introduce hearsay into the fact witness testimony. Mr.
7 Houston makes the related argument that Ms. Adams is likely to stray from the scope of her
8 expertise and testify to her own opinion about lay matters.² To the extent Mr. Houston may be
9 arguing that a witness may never testify both as a fact witness and as an expert witness, the
10 Court notes that the Ninth Circuit has already upheld the use of such testimony. *See United*
11 *States v. Alonso*, 48 F.3d 1536, 1540-42 (9th Cir. 1995) (holding that the trial court did not abuse
12 its discretion in allowing law enforcement officers to testify as experts to the significance of
13 activities that they personally observed the defendant engage in).

14 Expert witnesses are allowed to rely on certain types of hearsay in forming their opinions.
15 *See* Fed. R. Evid. 703 ("If [the facts or data underlying the expert opinion are] of a type
16 reasonably relied upon by experts in the particular field in forming opinions or inferences upon
17 the subject, the facts or data need not be admissible in evidence in order for the opinion or
18 inference to be admitted."). However, a witness that testifies both as a fact witness and as an
19 expert witness may rely on hearsay only for the expert witness portion of his or her testimony.
20 *See United States v. Dukagjini*, 326 F.3d 45, 58 (2d Cir. 2001) ("the government has cited no
21 case and we have found none, in which a court has permitted a witness to rely on hearsay for
22 non-expert testimony simply because that witness was also qualified to rely on hearsay for other,
23
24 involvement in that enterprise."); *Hankey*, 203 F.3d 1160 (upholding the admission of
gang expert testimony).

25
26 ² In particular, Mr. Houston objects to any testimony by Ms. Adams regarding the
27 interpretation of the August 28, 1997 phone call between Defendant Slocum and Al
28 Benton which Mr. Houston contends consists only of "plain language that [is] not code or
slang" that is "merely susceptible of different interpretations by lay people" Motion
at 9.

1 expert testimony.”); Fed. R. Evid. 701 (“If the witness is not testifying as an expert, the witness’
2 testimony in the form of opinions or inferences is limited to those opinions or inferences which
3 are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding
4 of the witness’ testimony or the determination of a fact in issue, and (c) not based on scientific,
5 technical, or other specialized knowledge . . .”). The Court will closely monitor the testimony
6 of Ms. Adams, if it is admitted, to ensure that her fact testimony is not based on inadmissible
7 evidence and to limit her expert testimony to truly expert matters. Ms. Adams, and any other
8 expert witness, shall not testify to the interpretation of evidence that simply involves plain
9 language or is otherwise not properly the subject of expert testimony. For example, Ms. Adams,
10 and other expert witness, shall not testify as to the interpretation of the August 28, 1997 phone
11 call from Defendant Slocum to Al Benton. As to this portion of the proffered testimony, Mr.
12 Houston’s motion is GRANTED.

13 Mr. Houston also argues that the dual nature of Ms. Adams’ testimony may cause her fact
14 witness testimony to be viewed with the cachet of an expert. If the distinction between fact and
15 expert testimony becomes blurred at any point during the testimony, the Court may instruct the
16 jury regarding the differences between fact and expert testimony and may limit the witness’
17 testimony to avoid confusion.

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1 **IV. Conclusion**

2 For the foregoing reasons, Mr. Houston's request for a pretrial hearing is DENIED, his
3 motion is RESERVED until trial to the extent it seeks to exclude the testimony of expert
4 witnesses, and his motion is GRANTED to the extent it seeks to limit expert testimony on lay
5 matters.

6
7 IT IS SO ORDERED.

8 DATED: February 6, 2007

9 

10 DAVID O. CARTER

11 United States District Judge
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Exhibit D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 02-938 (A) VAP Date November 27, 2007

Present: The Honorable Virginia A. Phillips, United States District Judge

Interpreter _____

Marva Dillard

Deputy Clerk

Phyllis Preston

Court Reporter/Recorder, Tape No.

Stephen Wolfe

Assistant U.S. Attorney

U.S.A. v. Defendant(s):

Present Cust. Bond

Attorneys for Defendants:

Present App. Ret.

David Michael Sahakian
Richard Scott McIntosh
Carl Edgar Knorr, Jr.

NO X

Burton H. Shostak, Joseph L.
Green, Charles M. Rogers,
Richard G. Novak, Dariel R.
Schattnik, Richard H. Sindel

NO X

Proceedings: Minute Order Granting in Part and Denying in Part Motion to Exclude Expert Witness Designation

I. Introduction

On September 30, 2007 Defendant Richard Scott McIntosh filed a "Motion to: (1) Compel Expert Discovery; (2) For Evidentiary Hearing Re: Admissibility of Expert Opinion Evidence" ("McIntosh Mot."). Defendant Carl Edgar Knorr, Jr. joined the McIntosh Motion on October 17, 2007. Defendant McIntosh filed his Reply ("McIntosh Reply") on October 29, 2007.

On October 1, 2007 Defendant David Michael Sahakian filed a "Motion to Exclude the Government's Designation of Danine Adams and Shelby Montgomery as Expert Witnesses Concerning the Subject Matter Detailed in Their Resumes Provided to the Defense on September 4, 2007 and for a Pretrial Daubert Hearing as to the Admissibility of Such Testimony" ("Sahakian Mot."). Defendants Richard Scott McIntosh and Carl Edgar Knorr Jr. joined the Sahakian Motion on October 8, 2007 and October 17, 2007, respectively.

On October 1, 2007 Defendant Carl Edgar Knorr, Jr. filed a "Motion of Carl E. Knorr, Jr. To Exclude the Government's Gang Expert Testimony and for a Pretrial Daubert Hearing as to the Admissibility of Such Testimony" ("Knorr Mot."). Defendant Richard Scott McIntosh joined the Motion on October 8, 2007. Defendant Knorr filed his Reply ("Knorr Reply") on October 29, 2007. Defendant Sahakian joined in the Knorr Reply on October 30, 2007.

The Government filed its consolidated Opposition ("Opp'n") on October 22, 2007 with respect to all three Motions ("Motions"). Defendants Sahakian, McIntosh and Knorr's ("Defendants'") Motions came before this Court for hearing on November 15, 2007. After reviewing and considering all papers filed in support of, and in opposition to, the Motions, as well as the arguments advanced by counsel at the hearing, the Court **GRANTS in PART and DENIES in PART** Defendants' Motions.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

II. Discussion

On September 4, 2007, the Government designated Danine Adams and Shelby Montgomery, both employees of the Federal Bureau of Prisons, as expert witnesses pursuant to Fed. R. Evid. 16(a)(1)(E). Defendants challenge the proffered testimony of Adams and Montgomery and request a pretrial hearing to examine the proffered testimony and determine its relevance, reliability, and possible unfair prejudice.

A. Legal Standard for Admissibility of Expert Testimony

The admissibility of expert testimony is governed by Fed. R. Evid. 702 ("Rule 702"), which states:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based upon sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

The Supreme Court in Daubert v. Merrell Dow Pharmaceuticals, 509 U.S. 579, 589 (1993), provided further guidance, holding that Rule 702 imposes a "gatekeeping" obligation on the courts to "ensure that any and all scientific testimony or evidence admitted is not only relevant, but reliable." The Supreme Court in Kumho Tire Co. v. Carmichael, 526 U.S. 137, 147-149 (1999) expanded the gatekeeping obligation of the courts, holding that it is not limited to scientific expert testimony, but applies to all expert testimony. Further, the Supreme Court held, "the trial judge must have considerable leeway in deciding in a particular case how to go about determining whether particular expert testimony is reliable." Id. at 152.

The Ninth Circuit in United States v. Hankey, 203 F.3d 1160 (9th Cir. 2000), set forth the following "preliminary questions" under Fed. R. Evid. 104(a) to analyze the admissibility of expert opinion testimony pursuant to the principles set forth in Daubert and Kumho Tire:

- Whether the opinion is based on scientific, technical, or other specialized knowledge;
- Whether the expert's opinion would assist the trier of fact in understanding the evidence or determining a fact in issue;
- Whether the expert has appropriate qualifications - i.e., some special knowledge, skill, experience, training or education on that subject matter[;]
- Whether the testimony is relevant and reliable[;]
- Whether the methodology or technique the expert uses 'fits' the conclusions . . . [;]
- Whether its probative value is substantially outweighed by the risk of unfair prejudice, confusion of issues, or undue consumption of time.

Id. at 1168 (internal citations omitted).

B. Defendants' Request for a Pretrial Hearing

Defendants request that the Court conduct a pretrial hearing to examine the proffered expert testimony in detail and determine its admissibility under the rules discussed above. [Sahakian Mot. at 23-24; McIntosh Mot. at 10; Knorr Mot. at 13.] The Ninth Circuit has expressly held that a pretrial hearing is not required for a

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

trial court properly to discharge its gatekeeping function under Daubert. See United States v. Alatorre, 222 F.3d 1098, 1099 (9th Cir. 2000). In Alatorre, the Ninth Circuit upheld the trial court's decision not to hold a pretrial hearing to determine the admissibility of expert testimony. Id. at 1105. The Alatorre court held that the trial court, by permitting defendant "to conduct a lengthy voir dire" during trial and ruling "on the relevance and reliability of [the expert's] testimony. . . fulfilled its duty to make a determination as to the reliability of the expert's testimony." Id.

Nevertheless, a pretrial hearing would be helpful in determining the expertise of these witnesses, at least with respect to Adams, who is expected to testify extensively for the Government; Montgomery's testimony is expected to be quite limited. Counsel for Defendants will have the opportunity during a pretrial hearing to explore the qualifications, relevance, reliability, and any undue prejudice resulting from the proffered testimony of Adams. Moreover, Counsel for Defendants will have the opportunity to question Adams on her specific methodology used in forming their expert opinions. After such pretrial hearing, the Court will rule on the qualifications, relevance, and reliability of Adams as well as the related issue of prejudice under Fed. R. Evid. 403. Counsel for Defendants shall have the opportunity to similarly question Montgomery at the time of trial, outside the presence of the jury. The Court will rule on Montgomery's qualifications, relevance, and reliability as well as the related issue of prejudice under Fed. R. Evid. 403 at that time.

C. Defendants' Arguments Regarding Allowable Testimony.

Although the Court reserves its ruling on the precise scope of allowable expert testimony until the time of the pretrial hearing, some of Defendants' arguments regarding the admissibility of the proffered testimony can be addressed here.

1. Can the Government's Expert Witnesses Testify Both as Fact and Expert Witnesses?

Defendants contend that "[t]he fact that Adams and Montgomery and the other witnesses will be testifying both as lay and expert witnesses causes great concern regarding the scope of admissible testimony permitted under the Rules of Evidence." [Sahakian Mot. at 5.] Further, Defendants argue that "[i]f the opinions are largely based on the witnesses's investigation of this case then it should not be permitted under the guise of 'expert' testimony as fact witnesses generally are not permitted to give opinion testimony or base their testimony on hearsay or other inadmissible evidence." [Id.]

Defendants contend the testimony of Danine Adams in the earlier trials of co-defendants Barry Mills and Tyler Bingham illustrate the prejudice that can result from this type of testimony. [Sahakian Mot. at 13.] In that case, Adams was permitted to testify about Aryan Brotherhood ("AB") activities; in particular, she testified regarding communications sent from Tyler Bingham to Al Benton through Ronald Slocum which allegedly resulted in the murders at Lewisburg. [Sahakian Mot. at 13-19.] Adams was allowed to testify as to her interpretations of the communications, i.e., that the murders at Lewisburg were committed in furtherance of the AB enterprise. [Id.] Upon questioning by the court, she testified that she based her opinion on her interview of Kevin Roach, an inmate informant. [Id.]

Defendants assert that the communication in question was in "plain language that was not code or slang" but "merely susceptible of different interpretations by lay people." Therefore, Defendants contend, Adams's interpretation of the communications was a lay opinion "based on her snitch interviews," not expert opinion. [Id.]

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The Government responds that "while it is true that the proposed experts will provide both factual and expert testimony, this does not negate their ability to testify as an expert witness." [Opp'n at 12.] Moreover, the Government asserts "Ms. Adams and Ms. Montgomery are allowed to rely on evidence which would otherwise be inadmissible in rendering [their] opinions, specifically hearsay obtained from interviews of cooperating witnesses." [Opp'n at 15 (citing Hankey, 203 F.3d at 1169 (an expert may base an opinion on inadmissible evidence, including hearsay, as long as it is the kind that is reasonably relied upon in that expert's field))].

Precedent in the Ninth Circuit clearly establishes that a witness may testify both as a fact witness and as an expert witness. See United States v. Alonso, 48 F.3d 1536, 1540-42 (9th Cir. 1995) (holding that the trial court did not abuse its discretion in allowing law enforcement officers to testify as experts to the significance of activities that they personally observed the defendant engage in). Moreover, expert witnesses are allowed to rely on certain types of hearsay in forming their opinions. See Fed. R. Evid. 703 ("If [the facts or data underlying the expert opinion are] of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject, the facts or data need not be admissible in evidence in order for the opinion or inference to be admitted.").

In contrast, a witness who testifies both as a percipient and an expert witness may only rely on hearsay for the expert witness portion of his or her testimony. See United States v. Dukagjini, 326 F.3d 45, 58 (2d Cir. 2001) ("the government has cited no case and we have found none, in which a court has permitted a witness to rely on hearsay for non-expert testimony simply because that witness was also qualified to rely on hearsay for other, expert testimony."); Fed. R. Evid. 701 ("If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge. . .").

At trial, the Government's expert witnesses will not be allowed to testify on factual matters based on inadmissible evidence. The Government is cautioned that any overlap of fact testimony and expert testimony based on inadmissible evidence offered by the Government's expert witnesses will result in the exclusion of both the fact and expert testimony. Furthermore, the Court will instruct the jury at the time the witness testifies regarding the distinction between opinion testimony from a witness qualified to give expert testimony, and testimony based on a witness's observations. Defense counsel is invited to prepare a special instruction for the Court's consideration.

2. Is the Proposed Expert Testimony Impermissibly Prejudicial to Defendants?

Defendants argue that a jury "attaches a heightened credibility to the testimony of a qualified expert which risks bolstering the fact-based testimony of the same witness." [Sahakian Mot. at 21; Knorr Mot. at 8-9.] Defendants further argue that such confusion by the jury could lead to inmate informants being "vouched" for by the expert testimony. [Sahakian Mot. at 22; Knorr Mot. at 13.] Defendants contend this is precisely what happened in the trial of co-defendants Mills and Bingham where Adams, through her stature as an expert, "was allowed to perform the ultimate courtroom alchemy — turning raw snitch sewage into prosecution gold." [Sahakian Mot. at 22.]

Defendants' arguments, while colorful, are unpersuasive. Fed. R. Evid. 403 provides:

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Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

If the Court finds that the probative value of the Government's expert witness testimony outweighs the danger of unfair prejudice, such testimony will be excluded. If the Court finds that the jury is possibly being misled or confused by the expert witness testimony, the Court may instruct the jury regarding the differences between fact and expert testimony or some other limiting instructions to cure the prejudice. See Hankey, 203 F.3d 1160, 1173; United States v. Tsinnijinnie, 91 F.3d 1285, 1289 (9th Cir.1996); United States v. Rubio-Villareal, 927 F.2d 1495, 1503 (9th Cir.1991).

D. Defendants' Arguments Regarding "Validation."

Defendants contend that the Government's designated expert witnesses may testify that Defendants are "validated member[s]" of the Aryan Brotherhood ("AB"). [McIntosh Mot. at 3; Knorr Mot. at 10.] The phrase "validated member" is "a term of art employed by the Federal Bureau of Prisons ("BOP") to refer to an inmate who the BOP has determined, through its own internal protocols, is a member of a prison gang or other 'disruptive group.'" [Id. at 7; Id. at 11.]

Defendants contend "[t]he government has failed, to date, to provide [Defendants] with discovery related to the BOP's 'validation' of his membership in the AB 'required under Rule 16 of the Federal Rules of Criminal Procedure as well as Rules 702 and 703 of the Federal Rules of Evidence. [Id. at 4; Id. at 10.] Defendants assert any testimony that Defendants are "validated member[s]" of the AB should be precluded or, in the alternative, should be the subject of an evidentiary hearing. [Id.; Id.]

Defendants contend that the issue of "validation" is of "critical significance" to Count Eight, the murder of Terry Walker, alleged against them in the First Superceding Indictment. [McIntosh Mot. at 9.] Count Eight charges Defendants with committing a violent crime in aid of racketeering ("VICAR") in violation of 18 U.S.C. § 1959(a)(1). Defendants argue that, in order to obtain a conviction under a VICAR count, "the government must prove, in addition to other elements, that Mr. McIntosh killed Mr. Walker for the purpose of promoting his position within the Aryan Brotherhood." [Id. (citing United States v. Vasquez-Velasco, 15 F.3d 833, 842, (9th Cir. 1994); United States v. Bracy, 67 F.3d 1421, 1429 (9th Cir. 1995))].

Finally, Defendants argue that whether or not the Government is ultimately able to produce BOP documents which conclude that Defendants are validated members of the AB, any expert opinion must first be tested against the factors set out in Hankey. [Id. at 10.]

The Government concedes that it has not produced the "validation" discovery for Defendants and asserts that it will produce the "validation" discovery as soon as it is able. [Opp'n at 17-18.] It contends that the "validation" discovery was first requested from the BOP on September 4, 2007 and several subsequent requests have been made since that date. [Id. at 21-22.] As to Defendants McIntosh and Knorr, the Government is ordered to turn over the "validation packet" no later than November 30, 2007. In the event the documents consisting of the "validation packet" are not disclosed to the defense by that date, the Government may not use them in its prosecution of this case.

Although the Government argues that an evidentiary hearing is unnecessary as it does not dispute that if

Exhibit E

VOLUME 7

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE WILLIAM ALSUP

UNITED STATES OF AMERICA,)
)
 PLAINTIFF,)
)
 VS.)
)
 MARVIN CARCAMO,)
 ANGEL NOEL GUEVARA, MORIS)
 FLORES, GUILLERMO HERRERA,)
 JONATHAN CRUZ-RAMIREZ,)
 WALTER CRUZ-ZAVALA,) NO. CR 08-0730 WHA
 ERICK LOPEZ,)
)
 DEFENDANTS.) SAN FRANCISCO, CALIFORNIA
) WEDNESDAY, APRIL 6, 2011
)
 _____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

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ALSO PRESENT: SPANISH LANGUAGE INTERPRETERS

1 **MR. GOODMAN:** MR. PHILIPSBORN.

2 **THE COURT:** WAIT, WAIT. HE WASN'T HERE?

3 **MS. GIBBONS:** YOUR HONOR, SO AS NOT TO ANNOY THE
4 COURT, WOULD IT --

5 **THE COURT:** WAIT. WE HAVE TO WAIT FOR
6 MR. PHILIPSBORN.

7 (MR. PHILIPSBORN ENTERED THE COURTROOM.)

8 **MR. PHILIPSBORN:** MY APOLOGIES, YOUR HONOR.

9 **THE COURT:** IT'S OKAY, BUT I NEED TO ASK ALL THE
10 LAWYERS TO TRY HARDER TO BE BACK ON TIME. THE JURY IS READY TO
11 GO. BRING IN THE JURY.

12 (MR. JURY ENTERED THE COURTROOM.)

13 **THE COURT:** PLEASE BE SEATED. WELCOME BACK.
14 GOVERNMENT MAY CALL ITS NEXT WITNESS.

15 **MS. GIBBONS:** THE UNITED STATES CALLS SERGEANT MARIO
16 MOLINA.

17 **THE COURT:** SERGEANT MOLINA, WELCOME.

18 **THE WITNESS:** THANK YOU, YOUR HONOR.

19 **THE COURT:** PLEASE STAND OVER THERE AND RAISE YOUR
20 RIGHT HAND. SWEAR HIM IN.

21 **MARIO MOLINA,**

22 CALLED AS A WITNESS FOR THE PLAINTIFF HEREIN, HAVING BEEN FIRST
23 DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

24 **THE WITNESS:** I DO.

25 **THE COURT:** HAVE A SEAT. WE NEED TO TAKE YOUR

1 PICTURE FOR THE CLOSING ARGUMENTS.

2 (A PHOTOGRAPH WAS TAKEN OF THE WITNESS.)

3 **THE CLERK:** GREAT.

4 **THE COURT:** ALL RIGHT. IF YOU WOULDN'T MIND AFTER
5 YOU GET YOUR GLASS OF WATER, PLEASE ADJUST THE MICROPHONE SO IT
6 CATCHES YOUR VOICE. PULL THE MIC CLOSER TO YOU. VERY GOOD.

7 GO AHEAD, COUNSEL.

8 **DIRECT EXAMINATION**

9 **BY MS. GIBBONS:**

10 **Q** SIR, COULD YOU PLEASE STATE AND SPELL YOUR NAME FOR THE
11 RECORD?

12 **A** MY NAME IS MARIO MOLINA, M-A-R-I-O M-O-L-I-N-A.

13 **Q** HOW ARE YOU CURRENTLY EMPLOYED?

14 **A** I'M A POLICE OFFICER FOR THE CITY AND COUNTY OF SAN
15 FRANCISCO, CURRENTLY HOLDING THE RANK OF SERGEANT.

16 **Q** HOW LONG HAVE YOU BEEN A SWORN POLICE OFFICER?

17 **A** SINCE 1994.

18 **Q** PRIOR TO YOUR WORK AS A POLICE OFFICER, COULD YOU DESCRIBE
19 YOUR EDUCATION?

20 **A** SURE. I HAVE AN AA DEGREE IN CRIMINOLOGY FROM THE SAN
21 FRANCISCO CITY COLLEGE. I ALSO HAVE A BA ON CHILD
22 DEVELOPMENTAL PSYCHOLOGY FROM SAN FRANCISCO STATE. I ALSO HAVE
23 A MASTER'S DEGREE IN MARRIAGE, FAMILY AND CHILDREN'S COUNSELING
24 FROM SAN FRANCISCO STATE.

25 **Q** PRIOR TO YOUR WORK AS A SAN FRANCISCO POLICE OFFICER --

1 **MS. GIBBONS:** YOUR HONOR, MAY I HAVE ANOTHER COUGH
2 DROP? I'M SORRY.

3 **BY MS. GIBBONS:**

4 **Q** PRIOR TO YOUR WORK AS A SAN FRANCISCO POLICE OFFICER, DID
5 YOU HOLD ANY OTHER JOBS?

6 **A** I DID. IN 1987 I WAS A COUNSELOR AT THE YOUTH GUIDANCE
7 CENTER AT 375 WOODSIDE HERE IN SAN FRANCISCO. I WORKED THERE
8 FOR ABOUT FIVE YEARS. THE FIRST THREE YEARS I WAS AN ASSISTANT
9 COUNSELOR, WORKING THE MIDNIGHT SHIFT. IN 1992 I BEGAN WORKING
10 ON THE DAYTIME, SO FROM '92 TO '94 -- I'M SORRY -- 1990 TO '92
11 I WORKED THE DAY SHIFT AS A COUNSELOR. AND THAT'S IN THE
12 HOUSING UNIT WHERE JUVENILES ARE HELD IN CUSTODY AWAITING
13 TRIALS, COURT HEARINGS.

14 IN '92 I BECAME A PROBATION OFFICER FOR THE CITY AND
15 COUNTY OF SAN FRANCISCO. I WORKED OUT OF 850 BRYANT, THE HALL
16 OF JUSTICE HERE IN SAN FRANCISCO, AND WAS ASSIGNED TO A
17 SPANISH-SPEAKING CASELOAD, MOSTLY TO LATINO CLIENTS.

18 **Q** THANK YOU. COULD WE JUST GO BACK A LITTLE BIT?

19 THE YOUTH GUIDANCE CENTER, CAN YOU DESCRIBE WHAT YOU
20 DID THERE?

21 **A** YES. AS I SAID BEFORE, I WAS A COUNSELOR. WE CALL THEM
22 COUNSELORS. IT'S A PEACE OFFICER POSITION. YOU ARE ACTUALLY A
23 PEACE OFFICER.

24 BASICALLY, WHAT I DID ON A DAILY BASIS, WHEN I WAS
25 WORKING MIDNIGHTS I WAS WORKING INTAKE. I WAS IN THE RECEIVING

1 UNIT. WE WOULD GO AHEAD AND RECEIVE THE YOUTH THAT WERE IN
2 CUSTODY FROM THE POLICE. MAKE SURE THEY SHOWER, THEY GOT CLEAN
3 CLOTHES, THEY ATE IF THEY WERE HUNGRY, AFFORDING PHONE CALLS TO
4 CALL THEIR PARENTS, THEIR LAWYERS, THEIR LAWYERS, GIVE THEM
5 ROOMS, ASSIGN THEM TO A SPECIFIC HOUSING UNIT DEPENDING ON WHAT
6 THE CUSTODY ISSUES WERE.

7 AND IN 1990 I WAS WORKING IN A DAYTIME POSITION. I
8 WORKED IN THE SOPHISTICATED YOUTH HOUSING UNIT, WHICH WAS B4
9 AND THEN B5 FOR SOPHISTICATED CRIMINALS. THAT'S WHAT THEY CALL
10 IT.

11 SO MY JOB THERE ENTAILED COMING IN AT 6:00 O'CLOCK IN
12 THE MORNING. I WOULD GET THEM UP, GET THEM OUT OF THEIR ROOM,
13 MAKE SURE THEY SHOWER, THEY ATE BREAKFAST, GET THEM READY FOR
14 SCHOOL, TAKE THEM TO SCHOOL WITHIN THE HOUSING UNIT, MAKE SURE
15 THEY WROTE THEIR LETTERS, THEY CALLED THEIR LAWYERS, OFFER THEM
16 ACTIVITIES, RECREATIONAL ACTIVITIES. AND ON WEEKENDS I WILL DO
17 MOVIES, VISITING, HELPING TO WRITE LETTERS, AND SO FORTH.

18 Q THANK YOU.

19 AS A PROBATION OFFICER, COULD YOU DESCRIBE A LITTLE
20 BIT ABOUT WHAT YOU DID?

21 A SURE. I STARTED IN THE PROBATION DEPARTMENT IN 1992. I
22 WAS ASSIGNED TO A SPANISH SPEAKING CASELOAD. BASICALLY WORKED
23 MISDEMEANOR CASELOAD. IT WAS MISDEMEANOR CASELOAD. AT THE
24 BEGINNING I WAS ASSIGNED TO PEOPLE WHO WERE IN PROBATION FOR
25 DOMESTIC VIOLENCE, PETTY THEFT AND OTHER MISDEMEANOR CASES.

1 SOME OF THEM WERE GANG MEMBERS THAT I HAD DEALT WITH AS A
2 JUVENILE. SO I GOT TO SEE THEM AGAIN, NOW IN A DIFFERENT
3 PERSPECTIVE AS AN ADULT.

4 THEN I WAS MOVED ON TO A NARCOTICS CASELOAD, MAINLY
5 FELONY SUPERVISION. I WAS ASSIGNED TO ABOUT 250 CLIENTS THAT I
6 SUPERVISE BY MAIL, SOME BY PHONE. AND THE MORE, WHAT WE CALL,
7 HIGH RISK, THEY WOULD COME IN AND SEE ME ONCE A MONTH.

8 Q SO, AT THE YOUTH GUIDANCE CENTER, THEN AT THE PROBATION
9 WHEN YOU WERE A PROBATION OFFICER, DID YOU HAVE A CHANCE TO
10 INTERACT WITH GANG MEMBERS?

11 A I DID. IN THE YOUTH GUIDANCE CENTER I DID. I WAS WORKING
12 IN WHAT IS CALLED B5, WHICH IS THE MAXIMUM SECURITY UNIT. I
13 DEALT WITH THE YOUTH THAT WERE AWAITING COMMITTAL PROCEEDINGS,
14 AND SOME OF THEM WERE GANG MEMBERS FROM THE MISSION DISTRICT.
15 SO I DEALT WITH THEM AT THAT LEVEL.

16 Q WHAT TYPES OF GANG MEMBERS WERE THEY?

17 A I'M SORRY?

18 Q WHAT TYPES OF GANG MEMBERS WERE THEY?

19 A MAINLY AT THAT TIME WAS IN THE 80'S NORTEÑOS AND SOREÑOS.

20 Q WE'LL GET INTO THAT IN A MINUTE, I GUESS.

21 LET'S GO BACK TO YOUR WORK AS A POLICE OFFICER. WHEN
22 DID YOU -- I PRESUME YOU WENT TO THE ACADEMY?

23 A I DID. I ENTERED THE POLICE ACADEMY IN 1994, AND I WAS
24 THERE FOR ABOUT FIVE MONTHS. BACK THEN IT WAS ABOUT A
25 FIVE-MONTH ACADEMY.

1 I GRADUATED IN '95, THE BEGINNING OF '95, AND I WAS
2 ASSIGNED TO CHINATOWN AREA FOR TRAINING, WHICH CONSISTED OF
3 THREE MONTHS TRAINING. THAT'S THE TIME THAT YOU ARE PAIRED UP
4 WITH SOMEBODY WHO IS AN FTO, A FIELD TRAINING OFFICER. AND YOU
5 WORK DIFFERENT HOURS. LIKE YOU WORK MIDNIGHTS, YOU WORK SWING
6 WATCH, AND THEN DAY WATCH AS A PATROL OFFICER. SO, MAINLY, I
7 WAS IN UNIFORM DRIVING A BLACK AND WHITE VEHICLE FOR THE SAN
8 FRANCISCO POLICE DEPARTMENT.

9 I DID THAT THROUGH, I THINK IT WAS, MAY '95, AND THEN
10 I PASSED MY PROGRAM, SO I GOT TO STAY THERE FOR A LITTLE BIT.
11 AND THEN I WAS TRANSFERRED TO MISSION STATION, IN THE MISSION
12 DISTRICT, I WOULD SAY THE LATTER PART OF THE SUMMER, AND I
13 STARTED WORKING AS A PATROL OFFICER IN THE MISSION DISTRICT.

14 ONCE AGAIN, I WAS DOING THE SAME DUTIES. DRIVING A
15 BLACK AND WHITE VEHICLE, RESPONDING TO 911 CALLS, RESPONDING TO
16 CRIMES IN PROGRESS, DEALING WITH CRIME SCENES, TALKING TO
17 WITNESSES, VICTIMS OF CRIMES AND SO FORTH.

18 Q WHERE IS MISSION STATION LOCATED?

19 A MISSION STATION CURRENTLY IS AT 630 VALENCIA STREET, WHICH
20 IS THE CORNER OF VALENCIA AND 17TH STREET.

21 Q YOU WORKED AT MISSION STATION FOR HOW LONG? I'M NOT SURE
22 IF I CAUGHT THAT.

23 A I WAS THERE FROM '95 TO 2003.

24 Q AND DID YOU HAVE ANY ASSIGNMENTS, PARTICULAR ASSIGNMENTS
25 WHILE YOU WERE THERE OTHER THAN PATROL?

1 A YES, I DID. THE LATTER PART OF '95 WE WERE EXPERIENCING A
2 LOT OF GANG CRIMES IN THE MISSION DISTRICT, AND WE HAD A UNIT
3 THAT WAS ASSIGNED TO INVESTIGATE GANG-RELATED CRIMES.

4 SO AS A PART OF THE ASSIGNMENT I WAS ASKED TO BE IN
5 PLAIN CLOTHES. SO I PARTNERED UP WITH -- MY FIRST PARTNER WAS
6 OFFICER CASTRO, AND I WORKED PLAINCLOTHES. SO MY ASSIGNMENT
7 CHANGED A LITTLE BIT. I WAS WORKING THE SWING WATCH STARTING
8 AT 4:00 O'CLOCK. I WORK FROM 4:00 P.M. TO 2:00 A.M. IN PLAIN
9 CLOTHES, AND MY MAIN DUTIES WAS TO GET TO KNOW GANG MEMBERS.

10 Q WHEN YOU SAY "PLAIN CLOTHES," FOR THOSE OF US WHO DON'T
11 KNOW WHAT YOU'RE TALKING ABOUT --

12 A I'M SORRY, CIVILIAN CLOTHES. SO I WILL WEAR LIKE YOU GUYS
13 ARE WEARING, PLAIN CLOTHES. I WILL HAVE MY RADIO, MY DUTY
14 WEAPON, MY BULLETS, MY VEST. IF I'M NOT DOING NARCOTICS
15 INVESTIGATION, I WILL HAVE MY VEST. BUT IF I WAS DOING
16 NARCOTICS, I WAS ON THE STREET LOOKING TO BE A DRUG ADDICT,
17 BUYING DRUGS, I WOULD TAKE THAT OFF. BUT MAINLY WAS JUST
18 UNDERCOVER INVESTIGATIONS.

19 Q AND DID YOU WORK IN GANG AREAS AT THIS POINT?

20 A I DID. MY MAIN -- MY MAIN JOB WAS TO GET TO KNOW GANG
21 MEMBERS, GET TO KNOW WHO THEY WERE, WHAT GANG THEY BELONGED TO,
22 WHAT COLORS THEY WERE WEARING, WHETHER THEY WERE IN PROBATION
23 OR ON PAROLE, NICKNAMES, WHO WAS COMMITTING CRIMES.

24 I ALSO -- AT THE BEGINNING I WAS ABLE TO BUY
25 NARCOTICS FROM THEM BECAUSE THEY DIDN'T KNOW ME. SO I WAS ABLE

1 TO INFILTRATE THE NEIGHBORHOODS WHERE THEY HANG OUT AND BUY
2 NARCOTICS IN AN UNDERCOVER CAPACITY. SO I WAS DOING THAT FOR A
3 WHILE UNTIL EVERYBODY KNEW WHO I WAS, SO I WASN'T ABLE TO BUY
4 ANYMORE.

5 BUT I CONTINUED TO DO -- ENGAGE ON A DAILY BASIS WITH
6 GANG MEMBERS.

7 Q DURING YOUR WORK IN THE MISSION DISTRICT, WERE YOU AWARE
8 OF ANY PARTICULAR GANGS IN THAT AREA AT THAT TIME?

9 A YES.

10 Q WHAT ARE THOSE GANGS?

11 A AT THAT TIME IN '95, I WOULD SAY MID '90'S, THERE WERE
12 THREE GANGS AT THE TIME. AT THAT SPECIFIC TIME IT WAS
13 NORTEÑOS, SOREÑOS AND AN INDEPENDENT GANG THAT WENT BY THE NAME
14 OF 11TH STREET. AND THEY WERE NOT AFFILIATED WITH THE SOREÑOS,
15 NOR WERE THEY AFFILIATED WITH THE NORTEÑOS; THEY JUST STOOD ON
16 THEIR OWN.

17 Q DID YOU -- DID THERE COME A POINT WHERE YOU LEARNED ABOUT
18 A GANG CALLED MS-13?

19 A YES.

20 Q WHEN WAS THAT?

21 A IN '95 WHEN I WAS ASSIGNED TO THE MISSION DISTRICT, I
22 BEGAN SEEING GRAFFITI, I BEGAN TALKING, ARRESTING MEMBERS OF
23 MS-13, MARA SALVATRUCHA.

24 Q DID YOU SPEAK TO PEOPLE IN THE COMMUNITY ABOUT MS-13?

25 A DO I TALK TO PEOPLE IN THE COMMUNITY ABOUT MS-13 AT THE

1 PRESENT OR AT THAT TIME?

2 Q AT THAT TIME.

3 A AT THAT TIME, YES. WE HAD COMMUNITY MEETINGS. THERE WAS
4 A LOT OF CONCERN AT THAT TIME ABOUT THE VIOLENCE THAT WAS GOING
5 ON IN THE MISSION DISTRICT, SO I ATTENDED COMMUNITY MEETINGS.

6 I ATTENDED -- WE HAD DIFFERENT PROGRAMS IN THE
7 MISSION DISTRICT. WE HAD THE BOYS AND GIRLS CLUB. WE HAD
8 HORIZONS UNLIMITED. WE HAVE ANOTHER CENTER CALLED PRECITA
9 CENTER WHICH IS NOT IN THE MISSION, PER SE, GEOGRAPHICALLY.
10 IT'S JUST ONE BLOCK OFF OF CESAR CHAVEZ.

11 I ATTENDED MEETINGS WITH THE YOUTH THERE. I ATTENDED
12 SCHOOL MEETINGS WHERE THERE WAS CONCERNS ABOUT GANG VIOLENCE OR
13 GANG PROBLEMS IN THE SCHOOLS AND SO FORTH.

14 MR. PHILIPSBORN: OBJECTION, YOUR HONOR, IN THE SENSE
15 THAT I DON'T THINK WE'VE EXPLAINED -- OR THE COURT HAS YET
16 EXPLAINED THE BASIS ON WHICH AN EXPERT WITNESS CAN RELY ON
17 INFORMATION THAT'S RECEIVED FROM VARIOUS SOURCES TO FORM
18 OPINIONS. I MEAN, SPECIFICALLY, WHAT WE'RE DOING IS BEGINNING
19 TO GET HEARSAY THAT'S FORMING, I'M ASSUMING, THE BASIS OF
20 OPINIONS, FOR EXAMPLE, CONCERNS ABOUT VIOLENCE.

21 I WONDER IF THE COURT MIGHT BE WILLING TO INSTRUCT
22 THE JURY ABOUT THE FUNCTION OF AN EXPERT AND THE FACT THAT THE
23 LAW PERMITS AN EXPERT TO RELY ON HEARSAY TO FORM OPINIONS, BUT
24 THAT THE WITNESS IS HERE TO EXPRESS OPINIONS AND THAT THE BASIS
25 FOR HIS OPINIONS WILL NEED TO BE ESTABLISHED THROUGH OTHER

1 EVIDENCE?

2 **MS. GIBBONS:** IF I MAY ADDRESS THAT? I THINK I'M
3 LAYING THE FOUNDATION HERE TO QUALIFY HIM AS AN EXPERT BY GOING
4 THROUGH WHAT HE'S DONE.

5 **THE COURT:** WELL, I WANT TO SAY SOMETHING. HE'S HERE
6 IN HIS EXPERT ROLE; IS THAT CORRECT?

7 **MS. GIBBONS:** THAT'S CORRECT, YOUR HONOR.

8 **THE COURT:** AND YOU KNOW THAT I HAVE -- WE'VE HAD
9 SOME MOTION PRACTICE ON THIS, AND THERE IS AN ORDER ON POINT?

10 **MS. GIBBONS:** YES, SIR, YOUR HONOR.

11 **THE COURT:** ALL RIGHT. I WILL SAY SOMETHING TO THE
12 JURY.

13 SERGEANT MOLINA HAS BEEN HERE BEFORE IN PRETRIAL
14 PROCEEDINGS, BECAUSE ONE HAT THAT HE WEARS IN THIS CASE IS TO
15 GIVE CERTAIN OPINIONS, UNLIKE OTHER WITNESSES WHO COME IN AND
16 SAY: I SAW THE RED LIGHT, AND IT WAS RED, WITH MY OWN EYES.
17 THAT'S USUALLY THE WAY WE PROCEED IN CASES. WHAT PEOPLE SAW
18 FIRSTHAND OR HEARD SOMEBODY SAY FIRSTHAND.

19 AND YOU'VE ALREADY PICKED UP ON THE FACT THAT HEARSAY
20 IS OFTEN NOT ADMISSIBLE BECAUSE THE PERSON SPEAKING OR THE
21 SOURCE IS THE -- IS NOT UNDER OATH, NOT SUBJECT TO
22 CROSS-EXAMINATION, COULD BE TOTALLY UNRELIABLE.

23 SO, SOMETIMES, THOUGH, WE ALLOW AN EXPERT TO COME IN
24 AND TESTIFY ABOUT CERTAIN THINGS. I HAVE LIMITED THIS
25 WITNESS'S TESTIMONY, AND HE'S NOT SUPPOSED TO TALK ABOUT

1 VIOLENCE. THAT WAS IN THE PRIOR ORDER. THERE WERE THINGS LIKE
2 GANG COLORS, THINGS LIKE GRAFFITI, SO FORTH, BUT WE HAVE BEEN
3 THROUGH THIS.

4 SO, IF THE GOVERNMENT IS GOING TO PROVE VIOLENCE,
5 IT'S GOT TO DO IT THROUGH FIRSTHAND WITNESSES.

6 NOW, WE'VE ALREADY SEEN SOME FIRSTHAND WITNESSES COME
7 IN HERE, BUT WE'RE NOT GOING TO HAVE SOMEBODY COME IN AND GIVE
8 OPINIONS, MERE OPINIONS ABOUT THINGS -- CRIMES THAT HAVE BEEN
9 COMMITTED AND THE LIKE. WE ARE GOING TO HAVE FIRSTHAND
10 TESTIMONY.

11 SO -- BUT I HAVE TOLD THE GOVERNMENT THEY CAN PRESENT
12 SERGEANT MOLINA TO GIVE CERTAIN OPINIONS THAT I THINK --
13 POSSIBLY IT'S UP TO YOU TO DECIDE HOW MUCH WEIGHT TO GIVE TO
14 IT -- THAT WOULD BE OF POSSIBLE USE TO YOU THAT GO TO OTHER
15 THINGS. FOR EXAMPLE -- WELL, I WON'T START GIVING YOU THE
16 EXAMPLES. WE'LL SEE WHERE THIS GOES.

17 BUT THIS IS NOT YOUR ORDINARY WITNESS. HE IS HERE
18 TODAY IN HIS ROLE AS AN EXPERT WITH EXPERT OPINIONS AND NOT
19 HERE AS A WITNESS TO SAY, FOR EXAMPLE, WHAT COLOR THE LIGHT WAS
20 AT THE TIME OF THE INTERSECTION, OR TO GIVE FIRSTHAND
21 KNOWLEDGE.

22 I'M GOING TO CAUTION THE GOVERNMENT TO BE SURE YOU
23 STICK TO WHAT THE RULINGS WERE THAT WE MADE ON SERGEANT MOLINA
24 AS TO WHAT KINDS OF OPINIONS HE CAN OFFER AND WHAT KINDS OF
25 OPINIONS HE CAN'T.

1 I WANT TO SAY TO SERGEANT MOLINA, YOU ARE NOT
2 SUPPOSED TO BE GETTING INTO VIOLENCE. THE GOVERNMENT CAN TRY
3 TO PROVE UP VIOLENCE THROUGH OTHER WITNESSES WHO CAN SAY IT
4 FIRSTHAND.

5 THERE WERE CERTAIN THINGS I SAID THAT MIGHT BE OF USE
6 TO THE JURY WITHIN THE SCOPE OF YOUR EXPERTISE, AND YOU ARE
7 CERTAINLY FREE TO GO INTO THAT, AND I EXPECT THE GOVERNMENT
8 KNOWS EXACTLY WHAT THOSE ARE. I'M NOT ACCUSING MS. GIBBONS OF
9 DOING ANYTHING WRONG. I DON'T THINK SHE'S DONE ANYTHING WRONG.
10 BUT I DID LAY DOWN SOME GUIDELINES EARLIER. I WANT US TO STICK
11 TO THOSE GUIDELINES.

12 **MS. GIBBONS:** YOUR HONOR, IF I COULD HAVE SOME
13 CLARIFICATION? I HAVEN'T ASKED FOR ANY OPINIONS YET.

14 **THE COURT:** HE STARTED TALKING ABOUT VIOLENCE.

15 **MS. GIBBONS:** OKAY.

16 **THE COURT:** THE PEOPLE AT THE SCHOOL, THEY WERE
17 CONCERNED ABOUT THE VIOLENCE AND ALL THAT. SO THAT MAY ALL BE
18 TRUE, BUT IF THE IDEA IS TO LEAVE THE IMPRESSION THAT MS-13 IS
19 A VIOLENT GANG, YOU SHOULD BRING IN THE FIRSTHAND WITNESSES WHO
20 CAN PROVE THAT UP AND NOT TRY TO PROVE IT UP THROUGH OPINIONS.

21 **MS. GIBBONS:** YES, SIR, YOUR HONOR. ABSOLUTELY.

22 **MR. SABELLI:** I'M SORRY. BEFORE MS. GIBBONS GETS
23 ROLLING HERE -- I'M SORRY TO INTERRUPT.

24 FOR THE RECORD, I WANT TO BE CLEAR ON BEHALF OF
25 MR. HERRERA, I OBJECT TO THIS MAN BEING ADMITTED AS AN EXPERT

1 BECAUSE OF THE UNRELIABILITY OF HIS SOURCES AND BASED ON THE
2 CONFRONTATION CLAUSE.

3 **THE COURT:** THANK YOU FOR THAT OBJECTION. THAT'S
4 BEEN OVERRULED FOR REASONS PREVIOUSLY STATED. MR. SABELLI,
5 THANK YOU FOR MAKING YOUR POINT AGAIN.

6 **MR. SABELLI:** THANK YOU, YOUR HONOR.

7 **THE COURT:** YOU MAY CONTINUE.

8 **BY MS. GIBBONS:**

9 **Q** I'M NOT SURE IF I ASKED YOU THIS, BUT DO YOU SPEAK
10 SPANISH?

11 **A** I DO. IT'S MY FIRST LANGUAGE.

12 **Q** HAS THAT AIDED YOU IN YOUR INVESTIGATIONS AND YOUR WORK?

13 **A** IT DOES, YES.

14 **Q** AFTER YOUR MISSION ASSIGNMENT, WHAT WAS YOUR NEXT
15 ASSIGNMENT?

16 **A** I WAS ASSIGNED TO THE SAN FRANCISCO POLICE DEPARTMENT GANG
17 TASK FORCE.

18 **Q** AND HOW LONG DID YOU HOLD THAT ROLE?

19 **A** I WAS THERE FOR FIVE YEARS.

20 **Q** DID YOU HAVE ANY SPECIALTY IN THE GANG TASK FORCE?

21 **A** YES. I WAS ASSIGNED TO INVESTIGATE -- I WAS ASSIGNED TO
22 INVESTIGATE CRIME, CRIMES.

23 **Q** AS FAR AS YOU KNOW, YOUR SPANISH SPEAKING ABILITIES, DID
24 YOU HAVE A ROLE WITH REGARD TO YOUR ABILITY TO SPEAK SPANISH?

25 **A** YEAH, I WAS ASSIGNED TO THE LATINO SECTION OF THE GANG

1 TASK FORCE. I WORKED THERE FOR FIVE YEARS. AND MOST OF THE
2 CASES THAT WERE ASSIGNED TO ME WERE CASES THAT WERE GENERATED
3 IN THE MISSION DISTRICT OR THE TENDERLOIN DISTRICT OR
4 INGLESIDE, WHICH WE HAVE A LARGE POPULATION OF LATINOS IN SAN
5 FRANCISCO.

6 Q HOW LONG DID YOU HOLD THIS ROLE AS A GANG TASK FORCE
7 INVESTIGATOR?

8 A I DID THAT FOR FIVE YEARS.

9 Q SO THAT'S -- I'M SORRY. WHEN DID YOU STOP, WHAT YEAR?

10 A IN 2008.

11 Q THEN WHAT DID YOU DO NEXT?

12 A I WAS PROMOTED TO THE RANK OF SERGEANT, AND I WAS
13 TRANSFERRED TO PATROL AGAIN. SO I WAS ASSIGNED TO THE
14 EXCELSIOR DISTRICT, WHICH IS OUT OF THE MISSION DISTRICT. I
15 WAS ON PATROL FOR, I WOULD SAY, ABOUT A COUPLE OF MONTHS,
16 WORKING MIDNIGHTS.

17 THEN I WAS ASKED TO BE THE SUPERVISOR OF THE
18 PLAINCLOTHES UNIT THERE, WHICH WOULD CONCENTRATE IN NARCOTICS
19 ENFORCEMENT, ROBBERY ABATEMENT DUTIES AND SO FORTH;
20 PLAINCLOTHES INVESTIGATION.

21 Q IN THE COURSE OF YOUR WORK IN THE MISSION DISTRICT AND
22 THEN INGLESIDE, DID YOU HAVE THE OPPORTUNITY TO SPEAK WITH GANG
23 MEMBERS?

24 A I DID.

25 Q IS THAT A COMMON OCCURRENCE?

1 **A** IT WAS -- WELL, THE INGLESIDE DISTRICT WAS A LITTLE BIT
2 DIFFERENT BECAUSE WE HAVE AFRICAN-AMERICAN GANGS AND LATINO
3 GANGS ALSO. SO MY HORIZONS EXPANDED A LITTLE BIT MORE BECAUSE
4 I HAD TO DEAL WITH OTHER GANGS BESIDES LATIN GANGS. SO, YES.

5 **Q** AND DID YOU HAVE THE OCCASION TO SPEAK IN PARTICULAR WITH
6 MS-13 GANG MEMBERS?

7 **A** IN THE INGLESIDE DISTRICT ONLY IF I CAME IN CONTACT WITH
8 THEM IN A TRAFFIC STOP AND SO FORTH. BUT WE DON'T HAVE A
9 NEIGHBORHOOD OR AN AREA THAT MS-13 WILL CLAIM IN THE INGLESIDE
10 DISTRICT, NO.

11 **Q** HOW ABOUT IN THE MISSION, WHEN YOU WERE WORKING IN THE
12 MISSION?

13 **A** I WAS TRANSFERRED TO THE MISSION IN 2009, AND I HAD DEALT
14 WITH MS-13 GANG MEMBERS SINCE, SINCE THEN, YES.

15 **Q** AND YOU'VE HAD THE OPPORTUNITY TO SPEAK WITH THEM?

16 **A** I HAVE.

17 **Q** AND IS THAT A COMMON OCCURRENCE?

18 **A** IT WAS FOR AWHILE, BUT IT STOPPED.

19 **Q** HOW WOULD YOU SPEAK WITH THEM, JUST WALK UP AND TALK TO
20 THEM? HOW DID THAT GO?

21 **A** AS A MATTER OF FACT, THE LAST TIME I TALKED TO MS-13, I
22 WAS BUYING NARCOTICS FROM THEM IN AN UNDERCOVER CAPACITY IN
23 DOLORES PARK.

24 **Q** OKAY. BUT AS FAR AS WHEN YOU WOULD SPEAK TO MS-13 MEMBERS
25 ON THE STREET, WAS IT VOLUNTARY? DID IT SEEM --

1 A ON THE STREETS? THE MEMBERS THAT I CAN RECALL WAS JUST
2 TAKE ONS, WHAT WE CALL TAKE ONS, JUST APPROACH THEM AND
3 CONSENSUAL ENCOUNTER AND SO FORTH.

4 Q CAN YOU EXPLAIN WHAT A CONSENSUAL ENCOUNTER IS?

5 A A CONSENSUAL ENCOUNTER IS WHEN A POLICE OFFICER IS EITHER
6 IN A VEHICLE OR ON FOOT AND WILL APPROACH A PERSON AND TALK TO
7 THEM: HI, HOW ARE YOU, WHAT ARE YOU DOING?
8 IN ORDER FOR POLICE OFFICERS TO STOP SOMEBODY'S
9 MOVEMENTS, WE HAVE TO HAVE PROBABLE CAUSE THAT THE PERSON IS
10 DOING SOMETHING OR IS ABOUT TO DO SOMETHING THAT MIGHT BE -- I
11 DON'T WANT TO SAY THE WORD "ILLEGAL," BUT IT MIGHT BE SOMETHING
12 IT'S NOT SUPPOSED TO BE DOING.

13 IN OTHER INSTANCES, CONSENSUAL ENCOUNTER IS WHEN
14 YOU'RE JUST COMING UP AND TALK TO SOMEBODY: HI, HOW ARE YOU,
15 WHAT ARE YOU DOING IN THE PARK? SOME PEOPLE GO, LIKE, YEAH,
16 RIGHT, AND WALK AWAY FROM YOU, AND THAT'S THAT BECAUSE YOU
17 DON'T HAVE ANY LEGAL BINDINGS TO STOP THEM, SO IT'S JUST AN
18 ENCOUNTER.

19 Q SO DID YOU FIND THAT -- DID MS-13 MEMBERS TALK TO YOU
20 VOLUNTARILY, CONSENSUALLY?

21 A YES. SOMETIMES THEY WOULD. SOMETIMES THEY WALK AWAY FROM
22 ME, SO...

23 Q DO YOU HAVE ANY TRAINING IN GANG INVESTIGATIONS?

24 A I DO. I HAD GONE TO NUMEROUS CONFERENCES AND SEMINARS IN
25 THE LAST FEW YEARS.

1 Q WOULD YOU PLEASE DESCRIBE THEM?

2 A SURE. THE MOST RECENT ONE I ATTENDED WAS IN SAN DIEGO,
3 CALIFORNIA AND THAT WAS LAST YEAR. IT WAS PUT ON BY -- AN
4 ORGANIZATION I BELONG TO, INTERNATIONAL LATINO GANG
5 INVESTIGATORS ASSOCIATION. THEY PUT ON A TRAINING ON LATIN
6 GANGS AND DRUG CARTELS FROM MEXICO. SO I WAS ABLE TO ATTEND
7 THAT. I WOULD SAY IT WAS AUGUST -- I'M NOT A HUNDRED PERCENT
8 SURE, BUT IT WAS AUGUST OF LAST YEAR.

9 PRIOR TO THAT I HAD ATTENDED ANOTHER CONFERENCE PUT
10 ON BY ILGI, INTERNATIONAL LATINO GANG INVESTIGATORS, AND IT WAS
11 DONE IN DENVER, COLORADO. THE SAME THING. THEY FOCUS ON LATIN
12 GANGS, TRANSNATIONAL GANGS, MOTORCYCLE GANGS AND SO FORTH.

13 PRIOR TO THAT, IN 2008 I WENT TO SAN ANTONIO, TEXAS,
14 ANOTHER NATIONAL CONFERENCE FOR INTERNATIONAL LATINO GANG
15 INVESTIGATORS. AND, BASICALLY, THE SAME THING. BASED ON
16 LATINO GANGS, MS-13, SOREÑOS FROM SOUTHERN CALIFORNIA, LOCAL
17 GANGS IN SAN ANTONIO, AFRICAN-AMERICAN GANGS. WE TALKED A
18 LITTLE BIT ABOUT WHAT'S GOING ON THERE AND SO FORTH.

19 I ALSO HAD ATTENDED A CONFERENCE THAT WAS PUT ON BY
20 THE FBI IN DALLAS, TEXAS. THAT WAS IN 2005. THAT WAS MAINLY
21 ON MS-13.

22 ALSO, IN 2008, I ATTENDED A CONFERENCE PUT ON BY
23 HOMELAND SECURITY IN JACKSONVILLE, FLORIDA, AND THAT WAS BASED
24 ON MS-13, HOW THEY'RE SPREADING THROUGHOUT THE UNITED STATES,
25 THEIR TRENDS, HOW THE OTHER AGENCIES ARE DEALING WITH MS-13,

1 WHAT THEY'RE SEEING IN THEIR CITIES, CRIMES THAT THEY'RE
2 SEEING, AND SO FORTH.

3 Q I'M SORRY TO INTERRUPT YOU. HAVE YOU TAUGHT ANY TRAINING
4 ON LATINO GANGS?

5 A I HAVE. I WAS ASKED BY THE CALIFORNIA DEPARTMENT OF
6 JUSTICE TO BE INSTRUCTOR FOR A SET OF CONFERENCES THAT THEY PUT
7 ON IN 2007, I THINK IT WAS, IN NORTHERN CALIFORNIA. THAT WAS
8 SPECIFIC ON MS-13, SO I GOT TO TALK -- MYSELF AND SERGEANT
9 MCDONALD, WHO WORKS IN THE GANG TASK FORCE, WE WERE ASKED TO
10 PUT ON A CLASS TO TEACH NORTHERN CALIFORNIA PEACE OFFICERS, AND
11 THAT INVOLVED HIGHWAY PATROL, LOCAL POLICE DEPARTMENTS,
12 DEPARTMENT OF CORRECTIONS AND SO FORTH, ABOUT MS-13 IN NORTHERN
13 CALIFORNIA.

14 SO I WAS AN INSTRUCTOR, AND WE DID -- WE DID A SET OF
15 TRAININGS -- I THINK IT WAS THE CITY OF REDDING, SAN JOSE,
16 SACRAMENTO. SO IT'S ABOUT THREE OR FOUR CITIES THAT WE DID IN
17 A PERIOD OF ABOUT A MONTH AND A HALF.

18 I ALSO TEACH AT THE SAN FRANCISCO POLICE ACADEMY.
19 I'M AN INSTRUCTOR THERE. I TEACH NEW POLICE OFFICERS COMING
20 INTO OUR DEPARTMENT ABOUT GANGS. I TEACH INTRODUCTION TO
21 GANGS. THAT'S IN GENERAL. I TALK ABOUT ALL DIFFERENT TYPES OF
22 GANGS THAT WE HAVE IN SAN FRANCISCO.

23 THEN I ALSO TEACH THE LATINO SECTION OF THE GANG
24 CULTURE, AND THAT'S A BLOCK, TWO HOURS. SO I TEACH ABOUT FOUR
25 HOURS.

1 I ALSO TEACH THE CADETS. WE HAVE A PROGRAM FOR
2 EXPLORERS OR CADETS THAT COME INTO THE POLICE DEPARTMENT. I
3 TEACH A CLASS ON LATINO GANGS.

4 I ALSO TEACH -- I TAUGHT 911 DISPATCHERS ABOUT THE
5 GANG CULTURE AND IMPORTANT THINGS THAT SHOULD BE ASKED WHEN YOU
6 ARE TALKING TO A VICTIM OR WITNESS OF A GANG CRIME. I TALKED
7 ABOUT THE AREAS WHERE GANG MEMBERS WERE. SO I TAUGHT THEM.

8 I ALSO HAD TAUGHT PROBATION OFFICERS ABOUT THE GANG
9 CULTURE, DIFFERENT GANGS THAT WE HAVE IN SAN FRANCISCO. I HAD
10 ALSO TAUGHT MEMBERS OF OUR COMMUNITY PROGRAMS. LIKE THE
11 SALVATION ARMY, THEY HAVE A PROGRAM CALLED "BACK ON TRACK,"
12 AND, MAINLY, THERE'S COUNSELORS THAT DEAL WITH PEOPLE THAT ARE
13 COMING BACK INTO OUR COMMUNITY AFTER BEING INCARCERATED, SOME
14 OF WHOM ARE GANG MEMBERS. SO I TEACH THEM ABOUT GANG COLORS,
15 AREAS IN THE CITY OF SAN FRANCISCO THAT GANG MEMBERS
16 CONGREGATE, WHAT TO LOOK FOR, RECOGNIZING TATTOOS AND SO FORTH,
17 GRAFFITI, ALSO. SO, YES, I DO A LOT OF TEACHING.

18 Q THANK YOU.

19 HAVE YOU PREVIOUSLY BEEN QUALIFIED IN A COURT OF LAW
20 AS A GANG EXPERT?

21 A YES, I HAVE.

22 Q APPROXIMATELY HOW MANY TIMES?

23 A I WOULD SAY OVER 30 TIMES OR SO.

24 Q AND CAN YOU NAME SOME OF THE COURTS THAT YOU'VE BEEN
25 QUALIFIED AS A GANG EXPERT IN?

1 **A** I HAVE BEEN QUALIFIED IN SUPERIOR COURT IN SAN FRANCISCO,
2 SAN MATEO COUNTY, MARIN COUNTY.

3 **Q** AND SPECIFICALLY AS TO MS-13, HAVE YOU BEEN QUALIFIED AS A
4 GANG EXPERT?

5 **A** YES, I HAVE.

6 **Q** ABOUT HOW MANY TIMES?

7 **A** I WOULD SAY OVER TEN TIMES.

8 **Q** HAVE YOU TESTIFIED AS A GANG EXPERT -- OTHER THAN BEING
9 QUALIFIED, ABOUT HOW MANY TIMES HAVE YOU TESTIFIED AS A GANG
10 EXPERT? DOES THAT MAKE SENSE? NO. I WAS WRONG.

11 HAVE YOU ALWAYS TESTIFIED FOR THE PROSECUTION AS A
12 GANG EXPERT?

13 **A** THE MAJORITY, YES. BUT I HAVE RECENTLY TESTIFIED FOR THE
14 DEFENSE WITHIN THE LAST MONTH AND A HALF.

15 **Q** AND HAVE YOU EVER BEEN DENIED STATUS AS AN EXPERT BY ANY
16 COURT?

17 **A** NO.

18 **MS. GIBBONS:** YOUR HONOR, AT THIS TIME THE UNITED
19 STATES OFFERS SERGEANT MOLINA AS AN EXPERT IN MS-13 IN THE SAN
20 FRANCISCO BAY AREA.

21 **THE COURT:** ALL RIGHT. THE -- IT'S ALWAYS UP TO THE
22 JURY TO DECIDE HOW MUCH WEIGHT TO GIVE TO ANY TESTIMONY,
23 INCLUDING TESTIMONY ALLOWED AS OPINIONS. SO, THIS WITNESS,
24 ENOUGH FOUNDATION HAS BEEN LAID TO ALLOW THE JURY TO HEAR THE
25 SUBJECT MATTERS THAT I SAID WERE ADMISSIBLE UNDER THE COURT'S

1 ORDER, PREVIOUS ORDER ON THIS. THOSE WENT TO THINGS LIKE
2 TATTOOS, AND SIGNS, TERRITORIES, COLORS, AND THE LIKE, BUT
3 THERE WERE CERTAIN AREAS THAT WERE RULED OFF LIMITS, AND I
4 EXPECT COUNSEL AND THE WITNESS TO HONOR THE PREVIOUS
5 GUIDELINES.

6 SO THERE WE ARE.

7 **MR. PHILIPSBORN:** YOUR HONOR, THE COURT, I BELIEVE,
8 PERMITTED THE DEFENSE SIMPLY TO SHORTHAND THE FACT THAT THERE
9 HAD BEEN OBJECTIONS PREVIOUSLY TENDERED, INCLUDING THOSE STATED
10 BY MR. SABELLI. AND SINCE THIS IS THE FORMAL OFFERING OF
11 SERGEANT MOLINA AS AN EXPERT, I REITERATE THOSE OBJECTIONS,
12 WHICH I RECOGNIZE THE GOVERNMENT -- I'M SORRY -- WHICH I
13 RECOGNIZE THE COURT HAS ALREADY OVERRULED, BUT WE REITERATE
14 THEM.

15 **THE COURT:** WELL, THE COURT OVERRULED POSITIONS OF
16 BOTH SIDES AND FOUND ITS OWN WAY ON THIS. WHATEVER THOSE
17 OBJECTIONS WERE THAT WERE PREVIOUSLY MADE, WE HAD CONSIDERABLE
18 DISCUSSION ABOUT THIS, SO THOSE ARE -- THOSE ARE RESERVED FOR
19 THE RECORD.

20 **MR. PHILIPSBORN:** THANK YOU, YOUR HONOR.

21 **THE COURT:** AND TO THE EXTENT I OVERRULED THEM
22 BEFORE, THEY'RE OVERRULED AGAIN. BUT THE GOVERNMENT MUST ALSO
23 KEEP IN MIND THE RESTRICTIONS THAT I PLACED ON THIS TESTIMONY,
24 THIS OPINION TESTIMONY.

25 **MS. GIBBONS:** YES, SIR, YOUR HONOR.

1 **THE COURT:** ALL RIGHT. GO AHEAD.

2 **BY MR. MARTINEZ:**

3 **Q** SERGEANT MOLINA, DOES MS-13 GO BY ANOTHER NAME?

4 **A** YES. MARA SALVATRUCHA.

5 **Q** AND DO YOU KNOW WHAT THAT MEANS IN ENGLISH?

6 **A** IN ENGLISH? WELL, YES. MARA MEANS GROUP. MARA IS
7 SALVADORIAN SLANG FOR GROUP. SALVATRUCHA, YOU CAN BREAK IT UP
8 INTO -- SALVATRUCHA IS USUALLY REFERRED TO A PERSON WHO IS FROM
9 THE COUNTRY OF EL SALVADOR. SALVA, S-A-L-V-A, MEANS SAVIOR,
10 AND TRUCHA IS IN REFERENCE TO A PERSON FROM EL SALVADOR.

11 IT'S A SLANG FOR SALVADORIAN NATIONAL THAT HAS COME
12 TO BE USED IN THE STREETS OF SAN SALVADOR, L.A. AREA, SAN
13 FRANCISCO. TRUCHA ALSO MEANS TROUT IN SPANISH, WHICH IS A
14 FISH, BUT IN CONTEXT TO THE GANG IT'S A GROUP OF SALVADORIANS,
15 MARA SALVATRUCHA.

16 **Q** WHERE WAS -- WHERE WAS MS-13 ESTABLISHED?

17 **A** MS-13 WAS ORIGINATED IN THE MID '80'S IN THE AREA PICO
18 RIVERA IN THE CITY OF LOS ANGELES, SOUTHERN CALIFORNIA.

19 **Q** DOES MS-13 HAVE CLIQUES?

20 **A** THEY DO.

21 **Q** AND IN PARTS OF CALIFORNIA?

22 **A** YES, THROUGHOUT CALIFORNIA. MAINLY, THEY'RE IN SOUTHERN
23 CALIFORNIA, THE L.A. AREA, BUT WE HAVE ONE HERE IN SAN
24 FRANCISCO. WE HAVE ONE IN RICHMOND, CALIFORNIA. AND THERE'S
25 OTHER CLIQUES THROUGHOUT NORTHERN CALIFORNIA.

1 Q AND ELSEWHERE IN THE UNITED STATES?

2 A NORTHERN CALIFORNIA.

3 Q AND ELSEWHERE IN THE UNITED STATES?

4 A I'M SORRY?

5 Q ELSEWHERE IN THE UNITED STATES?

6 A YES, MS-13 IS A TRANSNATIONAL GANG. SO YOU FIND THEM OUT
7 OF THE UNITED STATES. YOU FIND IT THROUGH LATIN AMERICA,
8 CANADA AND SO FORTH.

9 Q ARE YOU FAMILIAR WITH THE TERMS SOREÑO OR NORTEÑO?

10 A I'M FAMILIAR WITH BOTH, YES.

11 Q CAN YOU PLEASE DESCRIBE WHAT A SOREÑO IS?

12 A SOREÑO MEANS SOUTHERNER, AND IN SPANISH -- IT'S,
13 BASICALLY, A PERSON WHO HAS TIES OR IS AFFILIATED WITH THE
14 SOREÑO GANG OUT OF SOUTHERN CALIFORNIA.

15 Q OKAY. WHAT'S THE LITERAL TRANSLATION, DID YOU SAY THAT,
16 OF SOREÑO?

17 A SOUTHERNER.

18 Q DO YOU KNOW IF THEY CLAIM A CERTAIN COLOR?

19 A I DO. AND THEY CLAIM THE COLOR BLUE.

20 Q HOW ABOUT NUMBER; DO THEY CLAIM A NUMBER?

21 A THEY AFFILIATE WITH THE NUMBER 13, WHICH STANDS FOR THE
22 13TH LETTER OF THE ALPHABET, WHICH IS THE M.

23 Q AND FOR NORTEÑOS, WHAT ARE NORTEÑOS?

24 A NORTEÑO TRANSLATES TO NORTHERNER. THEY'RE MAINLY IN
25 NORTHERN CALIFORNIA.

1 Q DO THEY CLAIM A COLOR?

2 A YES, THEY DO. THEY CLAIM THE COLOR RED.

3 Q WHAT'S THE RELATIONSHIP BETWEEN NORTEÑOS AND SOREÑOS IN
4 SAN FRANCISCO?

5 A THEY'RE RIVALS.

6 Q DOES MS-13 ALIGN ITSELF WITH EITHER SOREÑOS OR NORTEÑOS?

7 A CAN YOU REPEAT THAT?

8 Q DOES MS-13 ALIGN ITSELF WITH EITHER SOREÑOS OR NORTEÑOS?

9 A MS-13 ALIGNS WITH SOREÑOS.

10 Q ARE THERE ANY SLANG TERMS THAT ARE USED BY MS-13 TO
11 DESCRIBE NORTEÑOS OR RIVAL GANGS?

12 A YES, THERE IS. THEY USE THE TERM OF THE WORD CHAVALA,
13 C-H-A-V-A-L-A.

14 Q WHAT DOES THAT WORD MEAN?

15 A CHAVALA MEANS GIRL, OR LITTLE GIRL.

16 Q THIS IS WHAT THEY REFER TO THEIR RIVALS AS?

17 A TO THE RIVALS.

18 AND THEY ALSO USE THE WORD CHAPETES, C-H-A-P-E-T-E-S.

19 Q WHAT DOES THAT MEAN?

20 A CHAPETES MEANS CHAPS, ROSY CHEEKS. THEY ALSO USE THE WORD
21 BUSTERS, B-U-S-T-E-R, IN REFERENCE TO NORTEÑOS.

22 Q CHAPS, THE ROSY CHEEKS, WHAT DOES THAT MEAN?

23 A WHAT I KNOW IS MAINLY REFERS TO AMERICAN BORN LATINO.

24 Q ARE THERE ANY TERMS USED BY NORTEÑOS THAT ARE DEROGATORY
25 TO REFER TO MS-13 MEMBERS?

1 **A** YES. NORTEÑOS USE THE WORD SCRAP, SCRAPAS, S-C-R-A-P-A-S,
2 SCRAPAS. AND THEY ALSO USE -- SPECIFICALLY TO MS-13, THEY USE
3 THE WORD CEROTE, QUOTE/UNQUOTE, WHICH IS SPELLED C-E-R-O-T-E,
4 WHICH TRANSLATED, QUOTE/UNQUOTE, MEANS PEACE OF SHIT. IT'S A
5 COMMON SALVADORIAN TERM THAT SALVADORIANS USE ALMOST IN THEIR
6 DAILY TALKS, THE WORD "CEROTE." SO IT'S TYPICAL TO A
7 SALVADORIAN NATIONAL, AND IT'S BEING USED BY NORTEÑOS IN
8 REFERENCE TO MS-13 GANG MEMBERS.

9 **Q** OTHER THAN COLORS, ARE THERE ANY TYPES OF CLOTHING THAT
10 SOREÑOS COMMONLY WEAR?

11 **A** YES, THEY LIKE TO WEAR THE DODGERS, L.A. DODGERS GEAR;
12 HATS, JACKETS, JERSEYS, SOCKS, WHATEVER THAT IS BLUE AND WHITE
13 AND REPRESENTS SOUTHERN CALIFORNIA.

14 THEY ALSO WEAR THE FOOTBALL TEAM, RAIDERS, GEAR.
15 RAIDERS, AT ONE POINT THEY RELOCATED FROM OAKLAND TO SOUTHERN
16 CALIFORNIA, SO THEY BECAME PART OF THAT CULTURE OVER THERE. SO
17 SOREÑOS STARTED WEARING THE RAIDERS GEAR IN REFERENCE TO
18 SOUTHERN CALIFORNIA. SOME OF THEM STILL WEAR RAIDERS GEAR HERE
19 AS OF RIGHT NOW.

20 THEY ALSO LIKE TO WEAR DALLAS COWBOYS GEAR BECAUSE,
21 ONCE AGAIN, IT'S BLUE AND WHITE, AND THEY WEAR THE JERSEYS,
22 THEIR HATS, SO FORTH.

23 **Q.** AND, LIKEWISE, DID NORTEÑOS WEAR CERTAIN TYPES OF SPORTS
24 CLOTHES?

25 **A.** YES. NORTEÑOS WEAR THE SAN FRANCISCO 49ERS GEAR,

1 ESPECIALLY THE RED AND BLACK JACKETS AND HATS, THE JERSEYS, THE
2 T-SHIRTS. AND THEY ALSO WEAR THE SAN FRANCISCO GIANTS BECAUSE
3 IT REPRESENTS NORTHERN CALIFORNIA.

4 Q. BUT HAVE YOU SUREÑOS WEAR THESE NORTEÑO 49ERS SPORTING
5 CLOTHES BEFORE?

6 A. I SEEN SUREÑOS WEARING SAN FRANCISCO GIANTS. THIS ONE KID
7 WHO'S A BASEBALL FAN, SO HE WEARS THE SAN FRANCISCO GIANTS
8 CLOTHING.

9 Q. SO, NOT ALL SUREÑOS AVOID WEARING THESE GIANTS CLOTHING?

10 A. NO. I SEEN AT LEAST ONE THAT LIKES TO WEAR THE GIANTS
11 CLOTHING.

12 Q. ARE SUREÑOS AND NORTEÑOS -- WHERE IN SAN FRANCISCO ARE
13 SUREÑOS AND NORTEÑOS?

14 A. MAINLY, THEY ARE IN THE MISSION DISTRICT. THEY'RE --
15 NORTEÑOS, NORTHERNERS, THEY ARE IN THE SOUTH SIDE OF THE
16 DISTRICT. THAT WOULD BE ON MISSION STREET, BETWEEN 22ND TO
17 CESAR CHAVEZ. IN THE MISSION DISTRICT IF YOU GO NORTH TO
18 SOUTH, AND IF YOU GO WEST TO EAST, IT WILL BE FROM, I WOULD
19 SAY, GUERRERO TO POTRERO AVENUE, ALL THE WAY DOWN BY THE
20 HOSPITAL.

21 AND THEY GO LIKE IN L SHAPE BECAUSE IN THE LOWER 24TH
22 STREET THEY BRANCH A LITTLE BIT NORTH TOWARDS THE INTERSECTION
23 OF 21ST AND ALABAMA. AND 22ND AND BRYANT. ALL THOSE AREAS
24 RIGHT THERE. THEY STILL CONSIDERED NORTEÑO TURF.

25 SUREÑOS IN SAN FRANCISCO IN THE MISSION DISTRICT --

1 I'M SORRY, NORTEÑOS ALSO HAVE A COUPLE OF BLOCKS ON THE NORTH
2 SIDE OF THE DISTRICT, WHICH IS NATOMA ALLEY, BETWEEN 14TH AND
3 15TH, AND WOODWARD ALLEY, BETWEEN 14 AND 15.

4 THAT'S A LITTLE ODD, BUT THEY JUST SPLIT UP A LITTLE
5 BIT AND THEY HAVE TWO BLOCKS THERE THAT THEY CLAIM.

6 SUREÑOS CLAIM THE NORTH SIDE OF THE DISTRICT. IN THE
7 MISSION DISTRICT THEY CLAIM THE NORTH SIDE. THEY CLAIM MISSION
8 STREET BETWEEN 21ST TO SOUTH, AND 16 TO THE NORTH. AND THEY
9 ALSO CLAIM 16TH STREET, BETWEEN CHURCH STREET TO THE WEST AND
10 POTRERO AVENUE TO THE EAST.

11 THEY HAVE A FEW PARKS THEY CLAIM. THEY CLAIM
12 FRANKLIN SQUARE PARK, WHICH IS LOCATED AT 17TH AND BRYANT.
13 THEY ALSO CLAIM DELORES PARK. HISTORICALLY, THEY HAVE CLAIMED
14 DELORES PARK, WHICH IS LOCATED AT 18TH AND CHURCH, 18TH AND
15 DELORES.

16 THEY ALSO CLAIM THE MISSION PLAYGROUND, WHICH IS
17 LOCATED AT 850 VALENCIA, BETWEEN 19TH AND 20TH, ON THE WEST
18 SIDE OF THE STREET.

19 THEY CLAIM INTERSECTION OF 20TH AND MISSION FOR
20 MS-13. SAN CARLOS AND 20TH, LEXINGTON AND 20TH, WHICH ARE TWO
21 LITTLE ALLEYS THAT GO NORTH AND SOUTH PARALLEL TO MISSION AND
22 VALENCIA. THE AREA OF 19TH AND MISSION AND 16TH AND MISSION.

23 **MS. GIBBONS:** THE COURT'S INDULGENCE. I DIDN'T
24 REALIZE I COULD USE THE ELMO.

25 **THE COURT:** WHAT ARE WE WAITING FOR?

1 **MS. GIBBONS:** I'M GOING TO SHOW WHAT'S BEEN MARKED AS
2 THE GOVERNMENT'S EXHIBIT 1 FOR IDENTIFICATION.

3 **THE COURT:** ALL RIGHT. IS THIS JUST FOR THE COURT
4 AND COUNSEL AND THE WITNESS?

5 **MS. GIBBONS:** YES, SIR.

6 **THE COURT:** ALL RIGHT. FINE.

7 **THE CLERK:** SHOULD BE ON.

8 (DOCUMENT DISPLAYED TO COUNSEL AND THE WITNESS.)

9 **BY MS. GIBBONS:**

10 **Q.** SGT. MOLINA, DO YOU RECOGNIZE WHAT'S BEEN MARKED AS
11 GOVERNMENT'S 1 FOR IDENTIFICATION?

12 **A.** UHM, I RECOGNIZE THE MAP THAT I INITIAL, PUT MY STAR
13 NUMBER ON IT, YES, MISSION DISTRICT, YES.

14 **Q.** IT'S A GOOGLE MAP?

15 **A.** YES.

16 **Q.** DID YOU MARK ON THIS TO DESCRIBE TERRITORY BEFORE YOU CAME
17 TO COURT?

18 **A.** I DID. I DID IN THE PAST.

19 **Q.** AND SHOWING YOU PAGE 2 OF THE GOVERNMENT'S 1. DO YOU
20 RECOGNIZE THIS?

21 **A.** CAN YOU LOWER IT A LITTLE BIT.

22 **Q.** LIKE THAT?

23 **A.** YES. THANK YOU. YES, I DO.

24 **Q.** HOW DO YOU RECOGNIZE IT?

25 **A.** IT'S A GOOGLE MAP THAT I MARK IN THE PREVIOUS HEARING.

1 IT'S THE MISSION DISTRICT.

2 **MS. GIBBONS:** YOUR HONOR, THE UNITED STATES REQUESTS
3 TO PUBLISH THIS AS A DEMONSTRATIVE TO THE JURY.

4 **THE COURT:** ALL RIGHT. THAT'S FINE. YOU CAN -- ANY
5 OBJECTION?

6 **MR. PHILIPSBORN:** NO, YOUR HONOR. BUT I'M ASSUMING
7 THERE'S GOING TO BE A FOUNDATION FOR THE OPINION LAID. I THINK
8 IT WAS AT A PREVIOUS HEARING, BUT RIGHT NOW ALL WE HAVE ARE
9 OPINIONS WITHOUT FOUNDATION.

10 **THE COURT:** WELL, HE'S -- THAT'S FOR COUNSEL TO
11 DECIDE WHETHER TO BRING OUT OR NOT. AND IF THE COUNSEL --
12 THAT'S A DIFFERENT QUESTION. THAT'S YOUR ASSUMPTION. BUT I'M
13 NOT REQUIRING THAT.

14 **MR. SABELLI:** ALSO, YOUR HONOR, THERE APPEARS TO BE
15 SOME HANDWRITING ON THE BOTTOM THAT I THINK IS EXTRANEIOUS. I
16 DON'T THINK THAT NEEDS TO BE PUBLISHED TO THE JURY.

17 **THE COURT:** I CAN'T SEE WHAT'S ON THE BOTTOM. SHOW
18 ME THAT. PUSH IT UP SO I CAN SEE.

19 WELL, NO, THAT'S -- THAT CAN STAY ON THERE. THAT'S
20 NOT A PROBLEM.

21 OKAY.

22 **MR. GOODMAN:** YOUR HONOR.

23 **THE COURT:** YES.

24 **MR. GOODMAN:** I HAVE ONE OTHER OBJECTION. IT'S
25 UNCLEAR AS TO THE TIME THAT THESE PARTICULAR MARKINGS RELATE

1 TO. DOES IT RELATE TO THE PRESENT OR DOES IT RELATE TO AT THE
2 TIME OF HIS --

3 **THE COURT:** I'LL ASK COUNSEL. THAT'S A GOOD
4 QUESTION. AND, MS. GIBBONS, YOU CAN CLARIFY.

5 GO AHEAD. FOR ILLUSTRATIVE PURPOSES, YOU CAN SHOW
6 THESE TO THE JURY. WHICH ONE DO YOU WANT TO SHOW FIRST.

7 **MS. GIBBONS:** WE'LL START WITH GOVERNMENT'S EXHIBIT
8 1, PAGE 1.

9 **THE COURT:** WHAT DO YOU MEAN EXHIBIT 1? IS THAT THE
10 EXHIBIT?

11 **MS. GIBBONS:** I MARKED IT AS 1.

12 **THE COURT:** IT SAYS SOMETHING DOWN AT THE BOTTOM,
13 LIKE "119." I HATE TO BE -- GO DOWN TO THE BOTTOM AND SHOW ME
14 WHAT'S ON THAT TAG.

15 **MS. GIBBONS:** THIS WAS ORIGINALLY MARKED AS 18.

16 **THE COURT:** WHERE DID 18 COME FROM?

17 **MS. GIBBONS:** WELL, IT'S ON THE BACK. IT'S BEEN
18 REMARKED AS 1 FOR TRIAL.

19 **THE COURT:** I SEE. ALL RIGHT. OKAY. SO LET ME
20 EXPLAIN. FOR PURPOSES OF THE TRIAL, IT'S NUMBER 1; IS THAT
21 RIGHT?

22 **MS. GIBBONS:** YES, SIR.

23 **THE COURT:** BUT IT'S NOT GOING TO GO INTO THE JURY
24 ROOM. IT'S JUST FOR ILLUSTRATING HIS TESTIMONY.

25 **MS. GIBBONS:** ABSOLUTELY.

1 **THE COURT:** YOU ALL REMEMBER THAT OVER THERE. YOU'RE
2 NOT GOING TO SEE THIS IN THE JURY ROOM, BUT YOU WILL SEE IT OUT
3 HERE. AND THE ACTUAL EVIDENCE IS WHAT THE WITNESS SAYS.

4 AGAIN, I SAY TO YOU, THIS IS OPINION TESTIMONY AND IS
5 NOT FACT TESTIMONY. IT'S OPINION TESTIMONY BASED ON THIS
6 WITNESS. AND IT'S UP TO COUNSEL TO LAY THE FOUNDATION, IF SHE
7 WANTS, FOR WHAT -- WHAT HE BASES THESE OPINIONS ON.

8 AND WITH THAT, I'M GOING TO LET YOU CLARIFY WHAT THE
9 TIME PERIOD IS.

10 IT ALSO, I THINK, IS WORTH SAYING -- TELL ME IF THIS
11 IS RIGHT -- YOU MADE A POOR CHOICE OF HIGHLIGHTER BECAUSE THE
12 BACKGROUND COLORS ARE THE SAME COLOR AS THE HIGHLIGHTER. I
13 DON'T KNOW WHY WE DID THAT.

14 THE ONLY WAY YOU CAN REALLY TELL WHAT'S BEEN
15 HIGHLIGHTED IS A LITTLE THICKER. IS THAT RIGHT?

16 **THE WITNESS:** YES.

17 **THE COURT:** ALL RIGHT. SO NEXT TIME WE WILL DO A
18 BETTER JOB ON PICKING A BETTER COLOR. I WANT THAT TO BE
19 CLARIFIED.

20 NOW -- YES, MR. FRENTZEN.

21 **MR. FRENTZEN:** YOUR HONOR, I'LL TAKE CREDIT. I THINK
22 THAT WAS MY MESS-UP WHEN WE WERE DOING THE HEARING AND I DIDN'T
23 BRING ENOUGH DIFFERENT-COLORED MARKERS. I'LL TAKE CREDIT FOR
24 THAT.

25 **THE COURT:** WE'LL GIVE YOU THE CREDIT FOR THAT.

1 **MR. FRENTZEN:** THANK YOU.

2 **THE COURT:** SMART MOVE.

3 (LAUGHTER)

4 **THE COURT:** OKAY. LAY AT LEAST THE FOUNDATION FOR
5 THE TIME PERIOD. I THINK THAT'S A REASONABLE REQUEST BY
6 COUNSEL. GO AHEAD AND SHOW IT TO THE JURY, YES.

7 (DOCUMENT DISPLAYED.)

8 **BY MS. GIBBONS:**

9 **Q.** DURING THE TIME FRAME OF, I GUESS, 2000 TO 2008, DID
10 SUREÑOS CLAIM A CERTAIN TERRITORY IN THE MISSION?

11 **A.** YES.

12 **Q.** AND, LIKEWISE, DID NORTEÑOS CLAIM A TERRITORY IN THE
13 MISSION?

14 **A.** YES.

15 **Q.** WHAT ARE WE LOOKING AT HERE ON THIS MAP?

16 **A.** WE LOOKING AT THE MISSION DISTRICT, MAINLY THE NORTH SIDE
17 OF THE DISTRICT. YOU HAVE -- ACTUALLY, YOU LOOK THE ENTIRE
18 MISSION DISTRICT.

19 YOU ARE LOOKING AT 24TH STREET TO THE SOUTH. THAT
20 WOULD BE THE BOTTOM PART OF THE SCREEN. AND ALL THE WAY UP TO
21 14TH STREET, TO THE NORTH. AND THAT WOULD BE THE UPPER PART OF
22 THE SCREEN.

23 **Q.** AND DID YOU MAKE SOME MARKINGS ON THIS?

24 **A.** I DID. MY MARKINGS, LIKE YOUR HONOR STATED, ARE THE HEAVY
25 YELLOW, ON TOP OF THE YELLOW. SO IT LOOK LIKE LITTLE

1 GREEN'ISH. LITTLE THICKER, ALSO.

2 AND I MARKED THE AREAS THAT I JUST PRIOR DESCRIBED A
3 FEW MINUTES AGO, ABOUT SUREÑO TURF.

4 Q. THE SIGNIFICANCE OF YOUR MARKINGS IS SUREÑO TURF?

5 A. YES. IN THE MIDDLE OF THE SCREEN RIGHT NOW --

6 Q. OKAY.

7 A. -- WHERE THE LETTER "A" IS PLACED, YOU CAN SEE SOME HEAVY
8 MARKINGS, THICKER MARKINGS, ON THAT.

9 Q. AND NOW TURNING THE PAGE, CAN YOU SEE THAT?

10 A. CORRECT. IF YOU'RE LOOKING AT THE BOTTOM RIGHT SIDE OF MY
11 SCREEN -- IT'S HOPEFULLY THE SAME SCREEN WE ARE LOOKING AT --
12 SO IT WOULD BE THAT HEAVY MARKING, A THICKER COLOR, KIND OF
13 GREEN'ISH. AND YOU SEE THE L SHAPE.

14 YOU LOOK AT 24TH STREET. THAT WOULD BE LIKE A
15 QUARTER FROM THE BOTTOM UP OF THE SCREEN. AND YOU SEE 24TH
16 STREET MISSION BART, THAT'S THE NORTENO TURF. THAT'S THE 24TH
17 STREET CORRIDOR. AND YOU HAVE THE LOWER IS GUERRERO STREET.
18 AND I TALKED ABOUT THE 24TH STREET CORRIDOR GOING FROM GUERRERO
19 ALL THE WAY DOWN TO POTRERO. WHICH POTRERO AVENUE IS NEAR THE
20 HOSPITAL, SAN FRANCISCO GENERAL HOSPITAL. SO YOU SEE ALL THE
21 MARKINGS.

22 AND THEN BRANCHING OUT NORTH WOULD BE THE LOWER PART.
23 AND THAT WILL BE ALABAMA -- ALABAMA STREET ALL THE WAY UP TO 20
24 STREET. SO IT'S L SHAPE. LOOKS LIKE AN L. IT GOES DOWN
25 TOWARDS THE RIGHT SIDE OF THE SCREEN, AND THEN IT GOES OUT

1 TOWARDS THE UPPER PART OF THE SCREEN IN THE NORTHERN DIRECTION.
2 AND THAT'S NORTEÑO TURF.

3 Q. DURING WHAT TIME FRAME?

4 A. LIKE WE STATED, 2000 TO 2008.

5 Q. AND WHAT'S THE BASIS FOR YOUR STATEMENT AS TO THIS IS WHAT
6 NORTEÑO TURF IS AND WHAT SUREÑO TURF IS?

7 A. MY WORK IN THE MISSION DISTRICT AS A POLICE OFFICER. MY
8 OBSERVATIONS. MY ENCOUNTERS WITH GANG MEMBERS. MY
9 INVESTIGATIONS OF GANG ACTIVITY IN THESE AREAS. GRAFFITI IN
10 THESE AREAS. SPECIFIC AREAS THAT GANG MEMBERS WILL CLAIM, OR
11 CLAIM AS A TURF.

12 Q. HAVE YOU EVER HEARD THE EXPRESSION OF TAGGING TERRITORY OR
13 TURF?

14 A. YES.

15 Q. WHAT DOES THAT MEAN?

16 A. I USE "MARKING." MARKING A TERRITORY.

17 AND IN THE GANG CULTURE, SPECIFICALLY LATINO GANGS,
18 THEY ARE VERY TERRITORIAL. THEY ARE TURF ORIENTED. USUALLY
19 THEY SETTLE IN AN ALREADY ESTABLISHED LATIN COMMUNITY, AND THEY
20 TEND TO MARK THE TERRITORY WHICH THEY CLAIM. AND THEY DO SO BY
21 DOING WRITINGS ON THE WALL.

22 THEY WILL TAG THE NAME OF THE GANG. THEY WILL TAG
23 NUMBERS AFFILIATED WITH THE GANG. THEY WILL DO WHAT'S ROLL
24 CALL, WHERE THEY PUT THE NAMES OF THE GANG MEMBERS AND A
25 STRAIGHT LINE TO THE BOTTOM, AND SO FORTH.

1 THEY PUT SLOGANS ABOUT THE GANG. THEY WILL USE PENAL
2 CODE SECTIONS TO DESCRIBE THE ACTIVITIES OF THE GANG, AND SO
3 FORTH.

4 Q. HAVE YOU LOOKED AT, HAVE YOU SEEN GANG GRAFFITI THROUGHOUT
5 THE COURSE OF YOUR, WHAT, 20 YEARS AS AN OFFICER?

6 A. UHM, YEAH. ABOUT 17, I THINK. YES, I HAVE SEEN GANG
7 GRAFFITI.

8 Q. START WITH -- IS THERE CERTAIN TYPES OF GRAFFITI THAT'S
9 SPECIFIC TO MS-13?

10 A. THERE IS.

11 Q. AND WHAT IS THAT?

12 A. THE NAME OF THE GANG. LA MARA SALVATRUCHA. SOMETIMES
13 IT'S USED AS TAG SPREAD OUT ON THE WALL.

14 THEY USE THE LETTERS "MS" TOO. THE LETTER "M" AND
15 THE "S" AND THE NUMBER 13 ATTACHED TO IT. THEY ALSO USE THE
16 NUMBER "20TH" IN SAN FRANCISCO, BECAUSE THEY CLAIM THE AREA OF
17 20TH AND MISSION.

18 SO THEY WILL WRITE "MS-13," "20TH STREET" NEXT TO IT,
19 WHICH IS REFERENCE TO THE CLIQUE, THEIR CLIQUE IN THAT SPECIFIC
20 AREA.

21 THEY ALSO USE LA GARRA, L-A G-A-R-R-A, WHICH IS "THE
22 DEVIL'S CLAW" OR "THE CLAW."

23 AND IT'S BASICALLY HAVING YOUR INDEX AND/OR PINKIE
24 FINGER UP OR POSITION, AND HAVING YOUR RING FINGER AND MIDDLE
25 FINGER DOWNWARD AGAINST THE PALM OF YOUR HAND, BEING TUCKED IN

1 BY YOUR THUMB. AND THAT'S IN REFERENCE TO -- IT'S THE
2 TRADEMARK FOR MS-13. BECAUSE WHEN YOU INVERT IT, IT TURNS INTO
3 AN "M."

4 (INDICATING.)

5 SO IT HAS TWO WAYS OF REPRESENTING THE GANG. IT
6 REPRESENTS LA GARRA, AND ALSO REPRESENTS THE "M" WHEN IT'S DONE
7 DOWNWARD.

8 **MS. GIBBONS:** MAY I SHOW THIS TO COUNSEL?

9 **THE COURT:** YES.

10 **MS. GIBBONS:** WHAT'S BEEN MARKED GOVERNMENT'S 101 FOR
11 IDENTIFICATION.

12 (PHOTOGRAPH DISPLAYED FOR COUNSEL AND THE WITNESS.)

13 **BY MS. GIBBONS:**

14 **Q.** DO YOU RECOGNIZE THIS EXHIBIT, THIS FIRST PAGE OF IT?

15 **A.** I DO.

16 **Q.** HOW DO YOU RECOGNIZE IT?

17 **A.** I RECOGNIZE THE GRAFFITI ON THE WALL. AS JUST STATED, IT
18 REPRESENTS LA GARRA, WHICH IS "THE CLAW," "THE DEVIL'S CLAW,"
19 WITH THE HAND'S UP, THE HORNS. THEY CALL THEM THE HORNS. AND
20 THE MIDDLE FINGERS CLOSED DOWN.

21 **Q.** SERGEANT, DO YOU KNOW WHERE THIS WAS TAKEN?

22 **A.** I DO.

23 **Q.** WHERE?

24 **A.** AS THE MISSION PLAYGROUND AT 850 VALENCIA. AND THIS IS
25 THE SOUTH WALL, SOUTH WALL OF THE PLAYGROUND.

1 Q. SORRY TO CUT YOU OFF. THEY'RE NOT LOOKING AT IT YET.

2 A. OH, I'M SORRY.

3 Q. YOU RECOGNIZE THIS. AND THIS IS A FAIR AND ACCURATE
4 DEPICTION OF WHAT YOU'VE SEEN ON MISSION PLAYGROUND, GRAFFITI?

5 A. YES. THIS IS THE TYPE OF GRAFFITI THAT I HAD SEEN IN THE
6 MISSION PLAYGROUND.

7 Q. AND THE NUMBER -- SECOND PAGE --

8 A. I WASN'T DONE WITH THAT.

9 Q. OH.

10 A. I WAS TALKING ABOUT LA GARRA.

11 Q. LET ME PUBLISH THE FIRST PAGE OF EXHIBIT 101.

12 THE COURT: THIS IS EXHIBIT WHAT?

13 MS. GIBBONS: 101.

14 THE COURT: ANY OBJECTION TO 101?

15 MS. GIBBONS: NO, YOUR HONOR.

16 MR. MARTINEZ: NO, YOUR HONOR.

17 THE COURT: RECEIVED IN EVIDENCE. 101 MAY BE SHOWN
18 TO THE JURY.

19 (PLAINTIFF'S EXHIBIT 101 RECEIVED IN EVIDENCE.)

20 (DOCUMENT DISPLAYED.)

21 BY MS. GIBBONS:

22 Q. SGT. MOLINA, WHAT ARE WE LOOKING AT HERE?

23 A. WE ARE LOOKING AT LA GARRA, I STATED BEFORE. WE ARE ALSO
24 LOOKING AT THE NUMBER 13, THE 1 AND 3. AND WE ARE ALSO LOOKING
25 AT THE NUMBER 20, THE 2 AND THE ZERO. AND YOU HAVE THE "ST"

1 FOR STREET, IN THE MIDDLE OF THE ZERO FOR 20TH STREET.

2 Q. IF YOU TOUCH THE SCREEN, IT MAKES A MARK. CAN YOU TOUCH
3 IT?

4 A. YOU HAVE THE "S" AND "T" FOR STREET. AND YOU HAVE THE
5 NUMBER 2 AND THE ZERO FOR 20TH. AND YOU HAVE THE 1 AND THE 3
6 REPRESENTS THE NUMBER 13, WHICH IS IN LINE WITH SUREÑOS. ALSO,
7 YOU HAVE LA GARRA, WHICH IS THE TRADEMARK FOR MS-13.

8 Q. AND YOU SAID THIS IS ON MISSION PLAYGROUND?

9 A. THAT WAS THE SOUTH WALL OF THE MISSION PLAYGROUND, NEAR
10 THE GRASSY AREA.

11 Q. OKAY. LIKEWISE, DO NORTEÑOS, DO THEY HAVE CERTAIN TYPES
12 OF GRAFFITI?

13 A. THEY DO.

14 Q. AND WHAT IS THAT?

15 A. UHM, IN NORTEÑO GANG CULTURE, THEY USE -- ONCE AGAIN, THEY
16 USE THE NAME OF THE GANG. THEY WILL WRITE DOWN THE NAME OF THE
17 GANG. LIKE IN SAN FRANCISCO, IT WILL BE LOCO NORTH SIDE, SFM,
18 22ND AND BRYANT. THEY WILL ALSO USE THE NUMBER 14. AND THAT
19 STANDS FOR THE 14TH LETTER OF THE ALPHABET, THE N. SO THEY
20 WILL USE THAT.

21 THEY WILL -- THEY WILL ALSO DO THE ROLL CALL. THEY
22 WILL PUT THE NAME OF THE GANG PLUS THE NICKNAMES OF THE GANG
23 MEMBERS THAT GO WITH THAT SPECIFIC CLIQUE.

24 THEY WILL ALSO USE THE NUMBER 24TH STREET -- 24TH,
25 WHICH REPRESENTS 24TH STREET. AND THEY ALSO WILL USE THE ROMAN

1 NUMERAL 14. "X" FOR 10, "I" FOR 1, AND "V" FOR 5. SO 14 IN
2 ROMAN NUMERALS.

3 THEY WILL ALSO USE THE "X," THE "X," AND THE 4 IN
4 NUMERICS. SO THEY WILL COMBINE BOTH. SO WHENEVER THEY WRITE,
5 THEY WILL COMBINE THEIR NUMBERS WITH ROMAN NUMERALS. THEY WILL
6 ALSO USE DOTS. THEY WILL USE LINES TO REPRESENT THEIR SPECIFIC
7 CLIQUE.

8 **THE COURT:** MS. GIBBONS, IT'S 1:00 O'CLOCK. BUT WHY
9 DON'T YOU FINISH UP, TAKE A MINUTE TO FINISH UP THIS POINT, AND
10 THEN WE'LL BREAK FOR THE DAY.

11 **MS. GIBBONS:** SURE.

12 **BY MS. GIBBONS:**

13 **Q.** I WOULD LIKE TO SHOW YOU A COUPLE OF MORE PHOTOGRAPHS OF
14 GRAFFITI, STARTING WITH THE GOVERNMENT'S 111 FOR
15 IDENTIFICATION.

16 IS THIS A GANG GRAFFITI OF SOME SORT?

17 (PHOTOGRAPH DISPLAYED FOR COUNSEL AND THE WITNESS.)

18 **A.** IT IS. WE LOOKING AT A WALL AND A WINDOW. AND YOU CAN
19 SEE THE XXIV FOR 24TH. AND RIGHT BELOW THAT, I CAN MAKE OUT
20 THE WORD "SHOTWELL."

21 SHOTWELL IS THE STREET IN THE MISSION DISTRICT AND IS
22 CLAIMED BY A NORTEÑO CLIQUE.

23 **MS. GIBBONS:** CAN WE PUBLISH THIS TO THE JURY FOR
24 DEMONSTRATIVE?

25 **THE COURT:** ANY OBJECTION TO 111?

1 **MR. PHILIPSBORN:** NO.

2 **THE COURT:** RECEIVED. PUBLISH IT TO THE JURY.

3 (PLAINTIFF'S EXHIBIT 111 RECEIVED IN EVIDENCE.)

4 **BY MS. GIBBONS:**

5 **Q.** CAN YOU EXPLAIN WHAT YOU WERE MENTIONING?

6 **A.** I WAS LOOKING AT THE BRICK AREA RIGHT UNDER THE WINDOW.
7 AS PREVIOUSLY STATED, I TALKED ABOUT THE "X" AND "X" AND "I"
8 AND "V." ROMAN NUMERAL FOR 24TH, WHICH REPRESENTS THE NORTEÑOS
9 IN THE MISSION DISTRICT.

10 RIGHT BELOW IT -- I DON'T KNOW IF YOU CAN READ IT,
11 BUT IT SAYS, "SHOTWELL." IT'S GOT THE "S," THE "H," THE "O,"
12 THE "T," THE "W," THE "E," AND THE TWO LS AT THE END. AND THE
13 LETTER "S" IS CROSSED OUT. THIS ONE RIGHT HERE IS CROSSED OUT.
14 IT'S GOT THE XING. IT'S BEING CROSSED OUT (INDICATING).

15 IN THE GANG CULTURE, WHEN THEY ARE WRITING GRAFFITI
16 AND THEY USE LETTERS ASSOCIATED WITH THEIR RIVALS GANG MEMBERS
17 WILL CROSS IT OUT AS A SIGN OF DISRESPECT FOR THE RIVALS.

18 IN THIS INSTANCE, NORTEÑOS WROTE "SHOTWELL" SO THEY
19 WILL TEND TO CROSS OUT THE "S," WHICH REPRESENTS SUREÑO. SO
20 THEY WILL CROSS IT OUT.

21 AND WHEN SUREÑOS WRITE SOMETHING THAT HAS TO DO WITH
22 THE LETTER "N," THEY WILL CROSS THE "N" OUT TO DISRESPECT THAT
23 GANG.

24 SO THAT'S TYPICAL IN THE LATINO GANG GRAFFITI. YOU
25 WILL SEE THAT.

1 **THE COURT:** CAN WE BREAK RIGHT NOW?

2 **MS. GIBBONS:** SURE.

3 **THE COURT:** ALL RIGHT. WE'RE GOING TO ADJOURN.

4 I NEED TO GIVE YOU A QUICK HEADS UP ON SOMETHING.

5 THIS IS FOR THE JURY. YOU KNOW, WHEN I WAS DRIVING TO WORK

6 THIS MORNING THEY -- THE NEWS WAS ALL ABOUT THE GOVERNMENT

7 SHUTDOWN. AND I HAVE MADE INQUIRY AND LEARNED THAT IF THERE IS

8 A GOVERNMENT SHUTDOWN, AT LEAST FOR A WEEK IT WILL NOT AFFECT

9 OUR JURY -- OUR ABILITY TO PAY YOU FOR JURY SERVICE.

10 SO EVEN IF THERE IS A SHUTDOWN ON FRIDAY, WE WILL BE

11 IN SESSION NEXT WEEK. AND IT SEEMS LIKE MAYBE EVEN FURTHER

12 THAN THAT. BUT I HAVE TO -- I ONLY HAVE A GUARANTEE, AT THIS

13 POINT, THROUGH NEXT WEEK. BUT I'M PRETTY SURE THAT WE WILL BE

14 ABLE TO TELL YOU THERE'S NO PROBLEM.

15 I JUST WANTED TO PUT YOUR MIND AT EASE SO THAT YOU

16 WOULDN'T BE THINKING THAT THE FEDERAL COURTHOUSE IS ALL DARK

17 AND THE ELECTRICITY IS OFF, AND WE WON'T BE GOING FORWARD WITH

18 THE TRIAL. WE WILL BE GOING FORWARD WITH THE TRIAL.

19 NOW, LOOKING AHEAD THIS WEEK, WE ARE IN SESSION ALL

20 FIVE DAYS. NEXT WEEK WE WILL BE IN SESSION ALL FIVE DAYS. THE

21 FOLLOWING WEEK I AM THINKING ABOUT TAKING OFF THAT FRIDAY,

22 APRIL 22ND, OR AT LEAST GIVING YOU OFF FRIDAY APRIL 22ND. SO

23 THAT WOULD BE THE THIRD FRIDAY THAT WE WOULD BE IN SESSION. I

24 CAN'T CONFIRM THAT FOR YOU YET, BUT THAT'S A POSSIBILITY.

25 BUT -- SO FIVE DAYS THIS WEEK, FIVE DAYS NEXT WEEK,

1 AND AT LEAST FOUR DAYS THE FOLLOWING WEEK. AND MAYBE FIVE. SO
2 THERE WE ARE. THAT'S MY HEADS UP FOR YOU.

3 HAVE A GOOD REST OF THE DAY. REMEMBER THE
4 ADMONITIONS. WE'LL SEE YOU BACK HERE TOMORROW.

5 **THE CLERK:** ALL RISE.

6 (JURY OUT AT 3:04 P.M.)

7 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN COURT,
8 OUTSIDE THE PRESENCE OF THE JURY.)

9 **THE COURT:** ALL RIGHT. THANK YOU. EVERYONE BE
10 SEATED.

11 MAY SGT. MOLINA BE EXCUSED FOR NOW?

12 HEARING NO OBJECTION, YOU CAN GO BACK TO WORK,
13 SERGEANT. THANK YOU. WE'LL SEE YOU HERE TOMORROW AT 7:30 A.M.
14 THANK YOU.

15 (WITNESS STEPS DOWN)

16 **THE COURT:** ANYTHING THAT THE LAWYERS -- I KNOW,
17 MR. ROSENBUSH, YOU WANTED TO MAKE A -- BEFORE WE GET TO
18 MR. ROSENBUSH'S STATEMENT, IS THERE ANYTHING MORE THAT THE
19 LAWYERS WANT TO TAKE UP WITH THE COURT AT THIS TIME?

20 **MR. SABELLI:** YES, YOUR HONOR. I HAVE TWO MATTERS
21 THAT NEED TO BE BROUGHT UP.

22 **THE COURT:** LET'S HEAR YOURS FIRST.

23 **MR. SABELLI:** ONE OF THEM, YOUR HONOR, THE EVIDENCE
24 THAT I BELIEVE MAY BE PROFFERED BY THE GOVERNMENT THROUGH
25 MR. MARTINEZ, IF HE TESTIFIES TOMORROW.

Exhibit F

1 UNITED STATES DISTRICT COURT
 2 EASTERN DISTRICT OF NEW YORK

3 -----x
 4 UNITED STATES OF AMERICA,

07 CR 725

5 versus United States Courthouse
 6 225 Cadman Plaza East
 7 Brooklyn, N.Y. 11201
 8 MICHAEL UVINO, ET AL,

DEFENDANTS.

9
 10 December 3rd, 2008
 11 9:30 a. m.

12 TRANSCRIPT OF TRIAL
 13 Before: HON. JACK B. WEINSTEIN,
 14 UNITED STATES DISTRICT COURT JUDGE

15 APPEARANCES

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by CAT.

LISA SCHMID, CCR, RMR
OFFICIAL COURT REPORTER

CARILLO/DIRECT/GEDDES

1 in this case. Thank you very much.

2 THE COURT: Thank you. Call your first witness
3 please.

4 (Pause in the proceedings.)

5 MS. GEDDES: Your Honor, the government's first
6 witness is investigator John Carillo.

7 THE COURT: Swear the witness please.

8 (Witness sworn by the clerk.)

9 J O H N C A R I L L O, having been first duly
10 sworn was examined and testified as follows:

11 THE CLERK: Please state your name and spell it for
12 the Court.

13 THE WITNESS: John Carillo, C A R I L L O.

14 DIRECT EXAMINATION

15 BY MS. GEDDES:

16 Q Good afternoon.

17 A Good afternoon.

18 Q Investigator Carillo, how long have you been in law
19 enforcement?

20 A Approximately 25 years.

21 Q What is your current position?

22 A I'm an investigator for the U.S. Attorney's Office in the
23 Southern District of New York.

24 Q Is the Southern District the district that we're in right
25 now?

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CARILLO/DIRECT/GEDDES

1 A No, it is not.

2 Q Where is the Southern District of New York?

3 A It is located in lower Manhattan.

4 Q And what district are we currently in?

5 A The Eastern District.

6 Q Are you familiar with the term "Cosa Nostra"?

7 A Yes, I am.

8 Q What does that term mean?

9 A Cosa Nostra's translation in English is "this thing of
10 ours" or "our thing."

11 Q Is it the mafia?

12 A Yes, it is.

13 Q Have you been investigating Cosa Nostra for a period of
14 years?

15 A Yes.

16 Q Approximately how long?

17 A Since 1992, so it is almost 16 years or 17 years, I'm
18 sorry.

19 Q Can you describe to the jury what positions you've had in
20 investigating Cosa Nostra?

21 A Yes, in 1992 I had approximately eight years on the New
22 York City Police Department and in 1992 I had my first
23 investigative assignment at Queens Public Morals Division and
24 my responsibilities during that assignment was to investigate
25 members and associates of organized crime, their involvement in

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1 gambling and loansharking operations, more particularly in the
2 County of Queens.

3 Q And how long were you at that assignment?

4 A From 1992 till the end of 1995.

5 Q And what did you do starting in 1995?

6 A In 1995 I was transferred to the Queens County District
7 Attorney's Squad. There's a group of detectives, NYPD
8 detectives assigned to the District Attorney's Office.

9 Q And how long were you in that capacity?

10 A From 1995 till 1998.

11 Q And beginning in 1998 how were you employed?

12 A In 1998 I was transferred to the Organized Crime
13 Investigation Division, more particularly the Investigative and
14 Analysis Section of the NYPD.

15 Q So, were you in the NYPD for the entire duration that you
16 just explained?

17 A Yes, from 1992 until I retired in 2004 I had those three
18 assignments, I investigated organized crime members and
19 associates.

20 Q And after you held those positions in the New York City
21 Police Department did you hold other positions that
22 investigated Cosa Nostra?

23 A Yes.

24 Q What were those positions?

25 A Upon my retirement I was hired by the Nassau County

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1 District Attorney's Office to again investigate organized crime
2 members and associates and about two -- almost two and a half
3 years ago I was hired by the U.S. Attorney's Office to conduct
4 criminal investigations and to maintain information and
5 intelligence on organized crime members and associates in the
6 New York City area.

7 Q And is that where you're currently employed?

8 A That's correct.

9 Q In your career investigating Cosa Nostra have you
10 participated in the arrest of members and associates of Cosa
11 Nostra?

12 A Yes.

13 Q Approximately how many arrests have you participated in?

14 A Several hundred.

15 Q Have you also participated in the searches of locations
16 associated with Cosa Nostra?

17 A Yes.

18 Q Approximately how many locations?

19 A Again, well over 100.

20 Q Have you participated in eavesdropping of locations or
21 telephones used by persons associated in Cosa Nostra?

22 A Yes.

23 Q Approximately how many devices?

24 A Well over 100 devices.

25 Q And have you conducted physical surveillance of people

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CARILLO/DIRECT/GEDDES

1 involved in Cosa Nostra?

2 A Yes.

3 Q Can you briefly describe to the jury what you mean by
4 eavesdropping?

5 A Eavesdropping is court authorized permission, we make an
6 application to the court, they authorize permission for us to
7 intercept conversations whether on a hard line telephone,
8 sometimes on a cellular telephone, sometimes on a bug which is
9 a device that we place in a location and we're authorized to
10 listen to particular people discussing particular crimes. If
11 those crimes are not being discussed we're also directed by the
12 court to minimize, to go off the machine and not listen.

13 Q And can you describe to the jury what you meant by physical
14 surveillance?

15 A Yes, physical surveillance is when we set up at a
16 location, it could be a social club, it can be a social event
17 held by organized crime. An example of my physical
18 surveillance, I set up in a vehicle, usually I have camera
19 equipment, video equipment, binoculars and according to what
20 the environment allows, darkness, weather, that type of thing,
21 I would take photographs when I could, take video when I could
22 and take notes of the observations that I make and at a later
23 time formalize that in a report, an official report.

24 Q And in your 25 years of law enforcement what are some of
25 the Cosa Nostra crimes that you've investigated?

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1 A I've been involved in investigations which include murder,
2 loansharking, extortion, various types of gambling enterprises,
3 money laundering, narcotics trafficking, auto crimes,
4 robberies, burglaries.

5 Q In your years investigating Cosa Nostra have you learned
6 about some of the language and the code words that are used by
7 members and associates of Cosa Nostra?

8 A Yes, I have.

9 Q Have you become familiar with the organizational structure
10 of Cosa Nostra?

11 A Yes.

12 Q Have you become familiar with the different crimes that
13 they commit and how they go about committing those crimes?

14 A Yes.

15 Q Have you been become familiar with the history of Cosa
16 Nostra in the United States?

17 A Yes.

18 Q Have you previously testified in this capacity about Cosa
19 Nostra?

20 A Yes.

21 Q Approximately how many times?

22 A Well, in federal court this would be the 17th time and then
23 I've done some state proceedings probably in excess of 20.

24 Q Can you briefly explain what is Cosa Nostra?

25 A Cosa Nostra is a criminal organization located throughout

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1 the United States that's involved in illegal activities for the
2 profit of its members.

3 Q And are there other names by which Cosa Nostra is commonly
4 referred to?

5 A Yes.

6 Q What are some of those?

7 A As you had mentioned before, the mafia; sometimes you'll
8 hear the mob, the syndicate. In Chicago they call it the
9 outfit.

10 Q What is the purpose of Cosa Nostra, generally speaking?

11 A Basically to generate money through illegal activities and
12 protect its hierarchy.

13 Q How is Cosa Nostra currently structured in New York City?

14 A In New York City there's five separate families.

15 Q And what do you mean by family?

16 A A family is a separate entity with its own hierarchy,
17 again, involved in their own illegal enterprises.

18 Q To be clear, you're not talking about blood relatives, are
19 you?

20 A No.

21 Q What are the names of the five families in New York City?

22 A You have the Gambino family, the Genovese family, the
23 Colombo family, the Bonanno family and the Lucchese crime
24 family.

25 Q Who assigned the names to those families?

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1 A Back in the early 1960's through sources that were
2 developed by the government they had the identities of the
3 ~~leaders or the bosses of the five families. We still use those~~
4 names today. So, the families that I just named, those were
5 the bosses that were in fact their last names in approximately
6 1962 or 1963.

7 Q Referring to the Colombo family, where does the name
8 Colombo from?

9 A From its prior boss, Joseph Colombo.

10 Q And have some of the families been known by other names
11 other than those you've previously testified about?

12 A Yes, they have.

13 Q The Gambino family, does that also guy by another name?

14 A They would call that John's family.

15 Q Referring to whom?

16 A John Gotti.

17 Q Are you familiar with the term "The West Side"?

18 A Yes.

19 Q What does that refer to?

20 A That's another reference to the Genovese crime family.

21 MS. GEDDES: May I approach the witness?

22 THE COURT: Yes. You needn't inquire.

23 Q Investigator Carillo, I'm showing you what's been marked
24 for identification as Government Exhibit 2.

25 Do you recognize that?

Holly Driscoll, CSR

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1 A Yes.

2 Q What is that?

3 A That's a chart of the hierarchy of an organized crime
4 family.

5 Q Is it a fair and accurate depiction of the organizational
6 structure of the crime family?

7 A Yes, it is.

8 MS. GEDDES: The government now offers Government
9 Exhibit 2 into evidence.

10 THE COURT: No objection. In evidence.

11 Q I'm now placing a larger version of Government Exhibit 2 on
12 the easel.

13 Investigator Carillo, could you please step down and describe,
14 starting from the top, the positions of a Cosa Nostra organized
15 crime family.

16 (Witness steps down.)

17 A Yes, typically speaking, at the top of the chart is a boss.
18 Each family has its own boss. Their power within their family
19 is absolute. They mete out punishment when necessary and set
20 policy for their family. The underboss is second in command,
21 usually named by the boss, and the consiglieri is somewhat of
22 an adviser, an intermediary between the families, the four
23 other families in New York, and also settles disputes between
24 what we call the administration and the rest of the family.

25 Q You mentioned the administration; what is the

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1 administration?

2 A The administration of each family is made up of the top
3 ~~three positions, the boss, the underboss and the consiglieri.~~

4 Q Below the administration of the family what is the next
5 position?

6 A On the chart it is referred to as a captain. Other names
7 for captain is capo, skipper, caporegime, capodecinas. They
8 are assigned by the boss of the family to run regimes or crews
9 within the family. Those regimes consist of numerous soldiers
10 that are assigned to their crew and close associates that are
11 on record in that captain's crew.

12 Q And you referred to the term crew; what is a crew?

13 A A crew is a regime led by a captain. It consists, again,
14 of soldiers and close associates.

15 Q You mentioned the term "soldier," are there any other names
16 for a soldier?

17 A Yes, on the street there would be words like good fellow,
18 wise guy, man of honor, button man. They're referred to
19 sometimes as a man of honor and within Cosa Nostra they'll also
20 refer to a soldier as somebody that is straightened out.

21 Q Do soldiers sometimes have crews around them?

22 A Well, officially the crew is the captain's but there are
23 certainly Cosa Nostra groups of associates that answer directly
24 to a soldier.

25 Q You mentioned now the term "associate," what is an

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1 associate?

2 A An associate is somebody outside the family that can be
3 involved mostly in criminal activity but we have seen occasions
4 when they're front-men for legal enterprises for a member of
5 Cosa Nostra.

6 Q Are you familiar with the term "inducted"?

7 A Yes.

8 Q What does that term mean?

9 A Inducted means somebody that has formally been allowed
10 membership into one of these crime families.

11 Q Is there a ceremony associated with an induction?

12 A Yes.

13 Q Can you please describe are there any oaths taken at the
14 that ceremony?

15 A Yes.

16 Q What oaths are taken?

17 A The oath of omerta which means silence and you swear
18 loyalty to that family in a formal ritualistic ceremony.

19 Q And what is the oath of omerta?

20 A The oath of omerta, again, is to keep the business of your
21 Cosa Nostra family to yourself, to never cooperate with law
22 enforcement, to go on record if you're approached by law
23 enforcement in any way, shape or form.

24 Q And are there any penlites for violating that oath of
25 omerta?

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1 A Yes.

2 Q What are those?

3 A It could be as high as death.

4 MR. WASHOR: I'm sorry?

5 THE WITNESS: Death.

6 Q Is there an ethnic requirement to become a member or a
7 soldier of organized crime or Cosa Nostra?

8 A Yes.

9 Q What are those ethnic requirements?

10 A You have to be of Italian descent at least on your father's
11 side and at different periods of time you have to be of
12 100 percent Italian descent, that fluctuates back and forth
13 through the years.

14 Q Please describe to the jury again what's the distinction
15 between soldier and associate?

16 A A soldier is formally inducted inside the family, an
17 associate is somebody involved with criminal activity from
18 outside the family.

19 Q And is there an ethnic requirement to become an associate?

20 A No, there's no gender or ethnic requirement to be an
21 associate.

22 THE COURT: You may sit down.

23 THE WITNESS: Thank you.

24 (Witness resumes the stand.)

25 Q And are associates considered members of the crime family?

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1 A Associates, no. An associate on record could be part of a
2 crew but they're outside the family.

3 Q Is a soldier allowed to talk publicly about his status as a
4 soldier?

5 A They're not supposed to, no.

6 Q Are there terms in Cosa Nostra known as "to be around" or
7 "with"?

8 A Yes.

9 Q What do those terms mean?

10 A Again, an associate is somebody involved with criminal
11 activity outside the family and if they're with somebody or
12 around somebody, that means they're under the protection of
13 that soldier or captain in an organized crime family.

14 Q Now, on the chart it has a captain and then a soldier and
15 then an associate; can an associate report directly or be
16 around a captain directly?

17 A Yes.

18 Q What is -- are you familiar with the term "to be on
19 record"?

20 A Yes.

21 Q What does that term mean?

22 A To be on record, there's many people involved in illegal
23 activities out in the world of Cosa Nostra, all different types
24 of illegal activities; if you do that independently, you're
25 leaving yourself at risk to be extorted by members of organized

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1 crime if you're not protected by another member. So, to be on
2 record with somebody is sort of to be claimed by that
3 particular member of organized crime so that if you are
4 approached by somebody outside of that crew or family you can
5 say that you're on record with that person and the appropriate
6 measures will be taken to protect you and your illegal
7 activities.

8 Q What happens to a crew when a soldier or a captain is
9 incarcerated?

10 A A soldier or a captain --

11 Q When a captain is incarcerated what happens?

12 A A captain, they can temporarily name somebody in an acting
13 position either through incarceration or illness to temporarily
14 run that crew and the affairs of that crew.

15 Q There would be a substitute for the captain?

16 A Yes.

17 Q Are you familiar with the term in Cosa Nostra known as "a
18 beef"?

19 A Excuse me?

20 Q A beef?

21 A A beef, yes.

22 Q What is a beef?

23 A A beef is a dispute within Cosa Nostra and there's protocol
24 to settling the disputes or the beefs.

25 Q How are beefs settled in Cosa Nostra, what is the protocol?

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1 A Well, if two associates are having a dispute that involved
2 a particular illegal enterprise and they're both represented by
3 people in Cosa Nostra, only people of the same ranks can
4 represent them. So, if someone, a particular associate is
5 represented by a soldier and the other someone is represented
6 by a captain, then that soldier has to get his captain to meet
7 in what they call a sit-down. Associates can't be present when
8 they're actually discussing Cosa Nostra business but their
9 representatives have to be of the same rank. So, only a
10 soldier meets with a soldier, a captain with a captain,
11 somebody in the administration would meet with somebody from
12 another family's administration.

13 Q What types of disputes are resolved at a sit-down?

14 A It could be monetarily, it could be a business dispute,
15 could be beefs over loansharking debts, gambling debts, the
16 whole gamut that could come up in Cosa Nostra life.

17 Q What are some of the types of locations in which members
18 and associates meet?

19 A Members and associates, well, historically met at social
20 clubs, they're usually storefronts set up by a member and
21 associate of organized crime, it becomes a meeting place for
22 that crew or that family. Many times they meet in bars,
23 restaurants, a big meeting space, actually wakes and weddings,
24 affairs, social events, things like that.

25 Q Do organized crime members on occasion use legitimate

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1 businesses?

2 A Yes, absolutely.

3 Q For what purpose?

4 A Do they use them to meet?

5 Q And for other purposes?

6 A Sure, many times the illegal monies from the enterprises
7 they're involved with, that fuels and funnels, allows them the
8 ability to establish themselves in legitimate businesses which
9 is quite common.

10 Q Once you become a member or a soldier of Cosa Nostra can
11 you describe -- can you decide that you no longer want to
12 become a member?

13 A No, when you go through the ritual, you're in it for life.
14 They tell you there's only one way in and one way out. So, if
15 you go to jail, if you cooperate with law enforcement, you're
16 still a member of that family until the day you die.

17 Q Is it common in Cosa Nostra to have a nickname?

18 A Yes, very common.

19 Q Are there terms in Cosa Nostra known as "a walk-talk"?

20 A Yes.

21 Q What is that?

22 A That's usually when two members or associates of organized
23 crime leave a location, either speak in front or walk around
24 the corner to evade law enforcement detection. They know from
25 years of experience now that we have a tendency to listen

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1 inside so it makes it easier for them to discuss illegal
2 activities.

3 Q Besides walk-talks are there other ways that people
4 involved in Cosa Nostra can try and avoid being intercepted by
5 law enforcement?

6 A Sure.

7 Q What are some of those?

8 A If they're inside a location sometimes they'll raise the
9 TV, they'll whisper, they'll try to keep other noises inside a
10 location just in case there is a device in there that we can't
11 intercept a conversation.

12 Q Are you familiar with the term "shakedown"?

13 A Yes.

14 Q What is a shakedown?

15 A A shakedown is an extortion of sorts; again, if you have an
16 illegal enterprise or sometimes a legal establishment and
17 you're not under the protection of another Cosa Nostra member
18 or have a representative, it is very common for Cosa Nostra
19 members to pay a visit to either threaten you or to make you
20 feel that you need their protection to continue your business.

21 Q And what types of techniques in your experience did the mob
22 use to shake down someone?

23 A There's many different ways, sometimes there's direct
24 approaches where they just tell you right out that they want
25 you to be with them. Sometimes they'll actually send people in

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1 to cause a disturbance in your business and then come in the
2 next day like the good guy saying, listen, I heard you had a
3 problem, if you don't want these problems anymore I could
4 intercede for you and then they work out a deal where you pay
5 me so much money, I'll afford you that protection.

6 Q You testified previously that you had some experience
7 investigating illegal gambling?

8 A Yes.

9 Q What types of illegal gambling have you investigated?

10 A Bookmaking operations, card games, policy operations which
11 another word for them is numbers, casino style gambling
12 operations.

13 Q How many investigations have you been involved with that
14 pertained to bookmaking?

15 A Several hundred.

16 Q How about illegal card games?

17 A A few dozen.

18 Q In the course of your investigation of illegal gambling
19 have you listened to conversations of wiretaps about illegal
20 gambling?

21 A Yes.

22 Q Approximately how many?

23 A Several thousand.

24 Q Have you conducted search warrants related to illegal
25 gambling investigations?

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1 A Yes.

2 Q Approximately how many?

3 A Several hundred.

4 Q Have you also reviewed gambling records seized pursuant to
5 a search warrant?

6 A Yes.

7 Q How many?

8 A Thousands.

9 Q Have you become familiar with the terms used in bookmaking?

10 A Yes, I have.

11 Q And have you previously testified about illegal gambling?

12 A Yes.

13 Q Approximately how many times?

14 A Over 15 times in state proceedings and I think in federal
15 court several times.

16 Q Is it typical for individuals involved in organized crime
17 to operate card games?

18 A Yes.

19 Q What types of card games?

20 A Various types, it could be poker games, Texas Hold 'Em,
21 Rubino, any type of game with several players sitting at a
22 table and they can make a profit off of it.

23 Q Where do they hold these games?

24 A Sometimes in cafes, social clubs; sometimes they'll rent
25 locations to have the games according to how many patrons they

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1 have.

2 Q And what does the host provide?

3 A Well, they usually provide some type of protection for the
4 game, they provide sometimes food and beverage, and other
5 players to play against.

6 Q Do they also provide security?

7 A Yes, sometimes, yes.

8 Q How does someone in organized crime profit from a card
9 game?

10 A Well, it is a no lose situation as opposed to other types
11 of gambling because they're not betting against you, so if you
12 have three tables going in a card place, three different games
13 and you take a cut of that game, it is not against you. So,
14 each time there's a pot they would take a percentage of the pot
15 so it is a no lose situation.

16 Another way that they do it is they'll charge each player by
17 the hour X amount of money per hour to join in the games so
18 they can't lose.

19 Q Is there any financial downsides to illegal gambling --

20 A No.

21 Q -- or card games?

22 A Not the card games, no.

23 Q Can you please explain how a typical bookmaking operation
24 works?

25 A Well, a bookmaking operation is usually fueled by organized

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1 crime or Cosa Nostra in my experiences. You have a bookmaker,
2 it is their business, they're the person that wins and loses,
3 so it is their operation. The bookmaker usually hires a
4 controller or a manager to oversee the day-to-day operations of
5 his business. It is usually the bookmaker's responsibility,
6 more so years ago, they would get a location and hire clerks
7 where they could accept wagers over the telephone. Today it is
8 more frequent to have offshore rooms where the bookmaker hires
9 an agency and the agent receives X amount of money per week
10 from each bettor that calls in bets to that location.

11 Q Is there a name for that location?

12 A Usually it is called a wire room or an office. Sometimes
13 you'll hear a bookmaker referred to as the office, meaning it
14 is his operation.

15 Q How are the people who run the office compensated, the
16 clerks and the comptrollers?

17 A Well, the clerks are usually -- if it is an office or a
18 wire room that's in the United States, it is not offshore,
19 they're compensated by a salary. There's other people involved
20 in a bookmaking operation that are called runners and that's
21 like a prearranged agreement between the bookmaker and the
22 runner.

23 Q Can you explain to the jury what a runner does?

24 A Yeah, like I said, there is prearrangement, usually they're
25 on a quarter or a half sheet, they share in the profits of the

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1 bettors' losses. So, if they're on a quarter sheet, they get
2 25 percent of the bettor's loss, the bookmaker gets 75 percent.

3 ~~If they have a prearranged agreement that they're on a half~~
4 sheet or 50 percent sheet, then when the bettors lose on a
5 particular week, they share the bettors' losses 50/50.

6 Q And they being the --

7 A The bookmaker and the runner. The runner's responsibility
8 is to go out and recruit bettors. I can only give you an
9 example, let's say in a particular bar there's a runner named
10 John and he has a code with the bookmaker of number eight. So,
11 he supplies that code to everybody he could recruit in that bar
12 and also supplies the phone number of where to bet with all the
13 players on his sheet or what they call the runner's count. So,
14 basically he supplies the number and his code. So, if he has
15 three different bettors, John, Paul and Joe, when they call
16 into that phone number that he supplies them, they have to
17 place their wager Joe for number eight, Joe the runner's number
18 number eight, John for number eight, Frank for number eight,
19 and that gives the people that are accepting the wagers a way
20 of distinguishing the bets on that runner's account from other
21 runners.

22 Q Just to clarify, what is the difference between a runner
23 and a bettor?

24 A A runner is somebody involved in the illegal enterprise,
25 he's sharing in the profits with the bookmaker. A bettor is

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1 the consumer in a bookmaking operation, so he's placing wagers.
2 In a bookmaking operation usually the week goes from Monday
3 through Sunday, so it starts on a Monday, ends on a Sunday.
4 So, the runners's account for each given week, they only square
5 up with their bettors once a week, goes from that Monday to
6 Sunday. So, at the end of that week that runner calls up the
7 wire room and he gets the figure, accumulated figures for all
8 his bettors and then he knows whether he has to pay the bettors
9 or get money from the bettors and split that with the
10 bookmaker.

11 THE COURT: We're going to break now. The lunch is
12 here. You'll have to come back, I'm sorry, sir.
13 Be back please at 1:20. You can retire to the jury room,
14 ladies and gentlemen.
15 (Jury leaves courtroom.)

16 MR. WASHOR: Your Honor --

17 THE COURT: Sit down please.

18 MR. WASHOR: I'm only standing here because I'm almost
19 to your side. Not starting today, but I'm going to ask that if
20 it is possible and if it meets with the approval of the U.S.
21 Marshals, I haven't asked them yet, that we can bring in, the
22 lawyers, some lunch for these three defendants. It is a little
23 difficult for them inside. If you feel it is not
24 appropriate --

25 THE COURT: Well, that will be up to the marshal. The

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1 (Continued on next page.)

2 A F T E R N O O N S E S S I O N

3 (Time noted: 1:30 p.m.)

4 (The following takes place out of the presence of the jury.)

5 THE COURT: Court Exhibit 1, note from Juror Number
6 Six, was distributed to the parties.

7 Will the witness take the stand please.

8 MS. GEDDES: Your Honor, can we address the note from
9 Juror Number Six?

10 THE COURT: Not right now. I'll see you at the end of
11 the day.

12 (Witness resumes the stand.)

13 (Jury enters courtroom.)

14 THE COURT: Proceed please.

15 DIRECT EXAMINATION (CONTINUED)

16 BY MS. GEDDES:

17 Q Investigator Carillo, before lunch you were testifying
18 about the difference between a runner and a bettor. Could you
19 please remind the jury of the distinctions between those two
20 terms?

21 A The bettor is the person, it is the consumer, they're
22 placing the wagers. The runner is sharing with the profits of
23 the bettors' losses with the bookmaker.

24 Q Who actually places the bet, the bettor or the runner?

25 A I've seen it both ways but the vast majority of time it is

Holly Driscoll, CSR

CARILLO/DIRECT/GEDDES

1 the bettor that actually places the wagers.

2 Q How does the bettor place the bet?

3 A They call the telephone number supplied to them by the
4 runner with the code; as I explained earlier, they have a code
5 and the runner has a code and usually there's a limit set to
6 them in that wire room how much money they can bet up to and
7 they place their wagers on sporting events, horses, whichever
8 they choose.

9 Q And what happens when the bettors for a runner have a
10 winning week?

11 A When the bettors win, let's say the accumulation of a
12 runner's account, they win \$5,000 for the week; the runner
13 never pays money out of his pocket, he gets the \$5,000 to pay
14 the players or the bettors from the bookmaker but then he has
15 what they call a \read\red or a stuck figure of \$5,000 and the
16 runner doesn't share in the profits of the bettors' losses
17 until that red or stuck figure is depleted. So, on week one if
18 his bettors won 5,000, he has a \$5,000 stuck figure. On the
19 second week of let's say football season the accumulation of
20 the runner's bettors lose \$10,000, the runner has to take the
21 first \$5,000, gives that directly to the bookmaker to deplete
22 or to get rid of that red or stuck figure.

23 Q That's to get rid of the stuck figure from the prior week?

24 A That carried from the following week. Now, the second
25 5,000 because he eliminated the \read\red or stuck figure, now

HOLLY DRISCOLL, CSR

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1 he shares in that 50 percent, so 2,500 would go to the
2 bookmaker and the runner would put \$2,500 in his own pocket.

3 Q And what if the runner had a winning week the following
4 week?

5 A Well, if there's no red or stuck figure then let's say the
6 bettors lose another \$5,000, it is split according to the
7 prearrangement, if it is a half sheet 2,500 to the runner, 25
8 to the bookmaker. There are runners that can stay with a
9 \read\red or stuck figure for weeks on end, they don't start
10 sharing in the profits until they get rid of that red or stuck
11 figure.

12 Q And does the runner ever have to pay out of his own pocket
13 to pay for any losses?

14 A Generally speaking, no.

15 MS. GEDDES: Thank you. I have no further questions.

16 MR. WASHOR: Judge?

17 THE COURT: Yes, please, cross.

18 CROSS-EXAMINATION

19 BY MR. WASHOR:

20 Q Good afternoon, Mr. Sarillo (ph). It is Mister?

21 A It is Carillo.

22 Q But it is Mister, it is not detective or investigator?

23 A Well, you can call me Mister but I am an investigator.

24 Q Thank you. You've got a lot of experience in investigating
25 organized crime, making -- preparing affidavits for wiretaps,

HOLLY DRISCOLL, CSR

Exhibit G

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94elpriv1

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

v.

08 CR 885 (NRB)

ANGELO PRISCO,

Defendant.

-----X

New York, N.Y.
April 14, 2009
9:21 a.m.

Before:

HON. NAOMI REICE BUCHWALD,

District Judge

APPEARANCES

LEV L. DASSIN

Acting United States Attorney for the
Southern District of New York

ELIE HONIG

LISA R. ZORNBERG

Assistant United States Attorneys

GALLET, DREYER & BERKEY

Attorneys for Defendant

ROGER LEE STAVIS

MICHELLE QUINN

ALSO PRESENT: JOHN LARAIA, Special Agent, FBI

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Voir Dire

(Trial resumed)

(In the jury room)

THE COURT: First matter is, there's a juror from
yesterday who requested to speak to me alone about some
matters, I don't know what, that he was uncomfortable speaking
in front of Mr. Prisco. If I can find his number. Juror 93.

MR. STAVIS: What does your Honor suggest?

THE COURT: Well, I was going to ask you.

MR. HONIG: I don't mind him meeting with your Honor.

MR. STAVIS: Yes. I think the parties are in
agreement that if the juror wants to meet with your Honor
alone, it would be an agreement that that could happen, so long

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Carillo, John
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19 A. Yes.
20 Q. Can you tell us what your responsibilities included.
21 A. Well, clean the window, all the garbage, you know, taking
22 out the garbage and clean the parking lot.
23 Q. And what was your shift at that time, if you recall?
24 A. 6 to 5:00.
25 Q. I want to direct your attention now to the date of
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94elpri5 Perez - direct
1 June 3rd, 1992. were you at work that day?
2 A. Repeat again?
3 Q. Yes. On June 3rd, 1992, were you at work that day?
4 A. McDonald's?
5 Q. Yes.
6 A. Yes.
7 Q. And can you tell us what happened that day while you were
8 at work.
9 A. Well, that day I remember I go outside, clean the parking
10 lot. And I saw the van, a white van, and I was in behind the
11 white van, I see a couple of bullets in the van, so when I go
12 to the other side, I see a couple of -- a couple of bullets in
13 the -- in the window, so when I approached to the -- to the
14 van, I see a body in there. So then I report to my supervisor,
15 my supervisor called the police, and...
16 Q. How did the body in the white van appear to you? How did
17 it look, that body?
18 A. The only thing I see was the body and a lot of blood on the
19 top of the body. That's all.
20 MS. ZORNBERG: No further questions, your Honor.
21 MR. STAVIS: No cross-examination, your Honor.
22 THE COURT: Thank you very much, Mr. Perez, for coming
23 in.
24 THE WITNESS: Thank you.
25 (Witness excused)
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94elpri5 Carillo - direct
1 MS. ZORNBERG: Your Honor, may we call our next
2 witness?
3 THE COURT: Certainly.
4 MS. ZORNBERG: The government calls John Carillo.
5 THE CLERK: Please remain standing and raise your
6 right hand.
7 (Witness sworn)
8 THE CLERK: Please state and spell your full name for
9 the record.
10 THE WITNESS: John Carillo, C-A-R-I-L-L-O.
11 THE CLERK: Please be seated.
12 JOHN CARILLO,
13 called as a witness by the Government,
14 having been duly sworn, testified as follows:
15 DIRECT EXAMINATION
16 BY MS. ZORNBERG:
17 Q. Where do you work, Mr. Carillo?
18 A. I'm an investigator in the United States Attorney's Office
19 in the Southern District of New York.
20 Q. What do you do as an investigator for the US Attorney's
21 Office?
22 A. My responsibilities are twofold. I assist the criminal
23 investigations on organized crime members and associates, and

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24 it's also my responsibility to gather and maintain information
25 on those associates and members.

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94elpri5 Carillo - direct
1 Q. For approximately how long have you worked for the US
2 Attorney's Office?
3 A. This summer it will be three years.
4 Q. And what did you do before that?
5 A. Prior to that, from 1984 to 2004, I was -- I worked for the
6 New York City Police Department, and then I had various jobs
7 after that.
8 Q. At the time you left the New York Police Department what
9 was your rank?
10 A. Detective investigator.
11 Q. And as an NYPD detective, did you have any particular
12 focus?
13 A. Yes. The first eight years I was on the police department,
14 I had patrol duties; I was in uniform. For the last twelve
15 years I was assigned to investigative assignments.
16 Q. And during your career with the NYPD what responsibilities,
17 if any, did you have for investigating organized crime matters?
18 A. From 1992, the last 12 years I was on the department, I had
19 three assignments in particular, where I was -- my
20 responsibilities included investigating organized crime members
21 and associates.
22 Q. During your law enforcement career, approximately how many
23 organized crime targets have you investigated?
24 A. Several hundred.
25 Q. And can you tell the jury what types of organized crime

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94elpri5 Carillo - direct
1 investigations you've been involved in.
2 A. Certainly. I've been involved in investigations which
3 include murder, loan sharking, gambling operations, extortions,
4 narcotics trafficking, auto crimes, money laundering.
5 Q. Okay. What sorts of investigative techniques have you used
6 in your organized crime investigations?
7 A. I've been involved in numerous surveillances; I've been
8 involved with the monitoring of literally thousands of
9 intercepted telephone calls or calls over bugged devices, with
10 electronic eavesdropping; I've partook in debriefing of
11 numerous confidential informants and cooperating witnesses; and
12 it was -- part of my responsibility was to be in constant
13 contact with other law enforcement agencies, whether they be
14 federal or state.
15 Q. Have any of your investigations of organized crime matters
16 also involved undercover operations?
17 A. Yes, they have.
18 Q. So let me go through each of those things individually now.
19 Physical surveillance, what is physical surveillance?
20 A. Physical surveillance is when you set up on a particular
21 location to make observations. Sometimes, if possible, I'll
22 take photographs, I'll have camera equipment with me, I'll have
23 binoculars with me, and whatever observations I make, I make
24 notes of it, and at a later time I formalize them into reports.
25 Q. Approximately how many physical surveillances have you done

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94elpri5 Carillo - direct

1 relating to organized crime?

2 A. Well over a thousand.

3 Q. And at what types of locations have you conducted physical

4 surveillances?

5 A. All different types of locations, which include social

6 clubs, bars, restaurants, I've done numerous surveillances at

7 wakes and social affairs that organized crime members have.

8 Q. And for what reason is surveillance useful in these types

9 of investigation?

10 A. Sometimes it's to see associations, if you're involved in

11 an investigation, sometimes it's to corroborate an intercepted

12 eavesdropping call, where you'll hear that certain people are

13 going to meet at a certain location, and you go to verify that.

14 Q. Okay. You also mentioned the use of electronic

15 surveillance or eavesdropping. Can you just first explain to

16 the jury, what is electronic surveillance?

17 MR. STAVIS: Your Honor, I have an objection, if I

18 might be heard at the sidebar.

19 THE COURT: Yes.

20 (Continued on next page)

21

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23

24

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94elpri5 Carillo - direct

1 (At the sidebar)

2 MR. STAVIS: Your Honor, if the witness is testifying

3 as to what he did and to who he surveiled, that's fine, but if

4 he's testifying as to what these methods are and how they're

5 utilized, then he would have to be qualified as an expert,

6 which he hasn't been. He's giving his opinions on various

7 techniques.

8 MS. ZORNBERG: Your Honor, I think it's form over

9 substance. I'm going to be qualifying him as an expert in a

10 matter of minutes, but I'm just laying the foundation of what,

11 you know, what things are and his involvement in them at the

12 same time. It's --

13 THE COURT: Objection is overruled.

14 (Continued on next page)

15

16

17

18

19

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94elpri5 Carillo - direct

1 (In open court)

2 BY MS. ZORNBERG:

3 Q. Investigator Carillo, can you tell us, please, what is

4 electronic surveillance?

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5 A. As law enforcement officers, we make an application to the
6 court, and with their permission, we intercept either
7 conversations over cellular or hard phones or, with their
8 permission, we install devices inside a location, to intercept
9 conversations, but more particularly, to listen to those
10 conversations as they pertain to particular crimes that we make
11 the application to the court, with their permission.
12 Q. And how often have you worked with electronic surveillance
13 in your organized crime investigations?
14 A. Over -- well over a hundred investigations, which included
15 the monitoring of thousands of intercepted conversations.
16 Q. All right. Moving along, you also mentioned the use of
17 confidential informants in organized crime investigations.
18 What is a confidential informant?
19 A. A confidential informant is somebody that comes into an
20 agreement with a law enforcement officer to supply us with
21 information regarding organized crime members or associates, in
22 return, sometimes for monetary compensation or sometimes for
23 court consideration. But their identity is always kept secret.
24 Nobody's to know their true identity.
25 Q. And you also mentioned cooperating witnesses. What is the

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94e1pri5 Carillo - direct

1 difference between a confidential informant and a cooperating
2 witness?
3 A. A cooperating witness is usually somebody that's in custody
4 already with law enforcement. They also come into an
5 agreement, but usually that agreement entails testifying in
6 open court.
7 Q. Approximately how many times have you spoken to cooperating
8 witnesses about organized crime?
9 A. Well over 50, possibly over a hundred.
10 Q. And have you previously testified in federal court about
11 organized crime in the New York City area?
12 A. Yes, I have.
13 Q. Approximately how many times?
14 A. Approximately 18 times.
15 MS. ZORNBERG: Your Honor, the government offers
16 Investigator Carillo as an expert witness on organized crime in
17 the New York City area.
18 MR. STAVIS: Brief voir dire, your Honor.
19 VOIR DIRE EXAMINATION
20 BY MR. STAVIS:
21 Q. Investigator Carillo, you're not an academic type expert,
22 is that correct?
23 A. Excuse me?
24 Q. You're not an academic type expert; you're coming from law
25 enforcement, is that correct?

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94e1pri5 Carillo - direct

1 A. Yes, I'm testifying from my experience in law enforcement,
2 yes.
3 Q. And you don't have a PhD or some sort of advanced degree,
4 do you?
5 A. In organized crime? I don't think it exists.
6 Q. Correct. There's no such thing as "mafiology," so to
7 speak.
8 A. Not that I know of.
9 Q. And there is a school here in New York that's part of the

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10 City University which is John Jay School of Criminal Justice.
 11 Are you familiar with that?
 12 A. Yes.
 13 Q. Do you hold any professorship or anything at that school?
 14 A. No, I don't.
 15 Q. And you haven't published in any kind of scholarly journals
 16 or anything like that, have you?
 17 A. No.
 18 Q. Now you were, from 1998 to 2004, with the investigative and
 19 analysis section, is that correct?
 20 A. Yes.
 21 Q. And one of the things you did there was you viewed reports
 22 of other law enforcement agencies, correct?
 23 A. That's correct.
 24 Q. And some of the reports were from an individual by the name
 25 of Ken McCabe, is that correct?

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94elpri5 Carillo - direct

1 A. That's correct.
 2 Q. And those went back for years and years, correct?
 3 A. Yes.
 4 Q. And those are reports that you viewed, correct?
 5 A. That's correct.
 6 Q. And you viewed reports of other agencies, correct?
 7 A. Yes.
 8 Q. And you've had direct contact with officials and you've
 9 gained -- with law enforcement officials and you've gained
 10 information from them, correct?
 11 A. Yes.
 12 Q. And then of course, as you told the prosecutor, you've
 13 gotten information from cooperators and from informants,
 14 correct?
 15 A. That's correct.
 16 Q. And you testified 18 times in the federal court, qualified
 17 as an expert, according to your testimony?
 18 A. Not qualified; in this capacity.
 19 Q. You could explain that, I --
 20 A. Sometimes it's up to the judge in the courtroom, sometimes
 21 I'm deemed in open court, sometimes I'm just allowed to testify
 22 as an expert.
 23 Q. I see.
 24 A. But all 18 times I testified in the capacity of an expert.
 25 Q. And you're not -- you didn't testify those 18 times as a

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94elpri5 Carillo - direct

1 fact witness where you -- something that you saw or one of your
 2 own surveillances.
 3 A. Several times I have, yes.
 4 Q. So there's a little overlap there?
 5 A. No. On one occasion the defense asked me fact questions,
 6 and I'd done an investigation myself in 1992, and the judge
 7 allowed me to come back as a fact witness. That's happened
 8 several times.
 9 Q. I see. And just to make clear, you have never testified
 10 where you're called as a witness by the defense, is that
 11 correct?
 12 A. That's correct.
 13 Q. And as an employee of the US Attorney's Office for the
 14 Southern District of New York, you couldn't, if you wanted to,

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15 testify for the defense, isn't that correct?
 16 A. It just hasn't occurred. I guess if they called me, I
 17 would be -- if I was subpoenaed by a defense attorney, I guess
 18 I would --
 19 Q. No, as an expert, not as a fact witness.
 20 A. As an expert?
 21 A. As an expert for the defense.
 22 A. I don't know what the rules are. It's just never happened.
 23 Q. And you're testifying here only as an expert, is that
 24 correct?
 25 A. That's correct.

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94elpri5 Carillo - direct

1 MR. STAVIS: No objection, your Honor.
 2 THE COURT: Thank you. You may continue,
 3 Ms. Zornberg.
 4 MS. ZORNBERG: Thank you, your Honor.
 5 BY MS. ZORNBERG:
 6 Q. Investigator Carillo, are you familiar with the term La
 7 Cosa Nostra?
 8 A. Yes.
 9 Q. And what does it mean literally?
 10 A. Literally, it means "this thing of ours" or "our thing."
 11 Q. What is Cosa Nostra?
 12 A. Cosa Nostra is a criminal organization located throughout
 13 the United States in different cities and Canada.
 14 Q. What are some of the other names by which Cosa Nostra is
 15 commonly known?
 16 A. You hear terms like the Mob, the Syndicate, the Mafia; in
 17 Chicago they call it the Outfit.
 18 Q. What is the purpose of Cosa Nostra, generally speaking?
 19 A. To create a hierarchy that protects its hierarchy and also
 20 to generate money through illegal enterprises.
 21 Q. How is Cosa Nostra currently structured in the New York
 22 City area?
 23 A. Well, historically and today, there's always been five
 24 families based in the New York City area.
 25 Q. And what do you mean by family?

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1 A. Family is a separate unit with a hierarchy involving
 2 criminal enterprises.
 3 Q. So just to be clear, you're not talking about a blood
 4 relative family, correct?
 5 A. No.
 6 Q. What are the five families in New York City?
 7 A. The Genovese crime family, the Gambino crime family, the
 8 Lucchese crime family, the Colombo crime family, and the
 9 Bonanno crime family.
 10 Q. Do any of those five families operate outside of New York
 11 City as well?
 12 A. Yes.
 13 Q. Do any of those five families operate in New Jersey?
 14 A. Yes.
 15 Q. Do the different families interact with each other?
 16 A. On a con -- on a daily basis, yes.
 17 Q. Can you tell us how the five families got their names.
 18 A. The federal government developed sources of information in
 19 the '60s. From those sources of information, the bosses that

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20 were in charge of these five families at that time are the
 21 names we continue to use today in law enforcement.

22 Q. And at the time in the 1960s, who were the bosses of the
 23 five families?

24 A. Well, you had Vito Genovese, Carlo Gambino, you had Joe
 25 Colombo, for the Bonanno family you had Joe Bonanno, and for

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1 the Lucchese family you had Tommy Lucchese.

2 Q. Is there an organized crime family that has historically
 3 operated in New England?

4 A. Yes, with the permission of the five families from New --
 5 oh, in New England, yes, the Patriarca family.

6 Q. And historically is there any relationship between the
 7 Patriarca family and the Genovese family?

8 A. They've had interactions, yes.

9 Q. Now focusing on the five families in New York --

10 MS. ZORNBERG: Your Honor, may I approach the witness?

11 THE COURT: Sure.

12 Q. Investigator Carillo, I'm showing you what's been marked
 13 for identification as Government Exhibit 40. What is it?

14 A. It's a diagram of the ranking within the Cosa Nostra or an
 15 organized crime family.

16 Q. And will the diagram assist in explaining the internal
 17 structure of the five families for the jury?

18 A. Yes.

19 MS. ZORNBERG: The government offers Government
 20 Exhibit 40.

21 MR. STAVIS: No objection, your Honor.

22 THE COURT: Received.

23 (Government's Exhibit 40 received in evidence)

24 MS. ZORNBERG: All right. Let's put that up on the
 25 screen. We'll have to enlarge as we go through it.

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1 Q. First of all, how are the five families structured
 2 internally?

3 A. From top down, you want me to go through each rank?

4 Q. Yeah, let's -- starting at the top.

5 A. Okay. Each family has a boss. He's in charge of his
 6 family. His power is absolute. He sets policy within his own
 7 family and metes out punishment when he deems necessary.

8 He names his underboss; that's the second in command.

9 And the consigliere is an adviser to the boss, also
 10 interacts with other families.

11 The three top ranks, the boss, the underboss and the
 12 consigliere, make up the administration.

13 Q. Okay. Let's talk now about the family hierarchy below the
 14 level of administration. Looking at the next level, which, in
 15 the diagram is indicated as capos.

16 A. Yes. Capos, also known as caporegimes or capodecimas,
 17 they're also known as skippers. They are assigned by the boss
 18 of the family to run regimes or crews within the family, and
 19 those crews consist of soldiers, which are inducted members of
 20 the family and close associates.

21 Q. So who does the capo supervise?

22 A. Soldiers and close associates.

23 Q. And what are the advantages to a capo of having a crew?

24 A. Well, the crew, in an organized crime family, are the

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25 soldiers and the close associates involved with illegal
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1 activities. It's their responsibility to push money upward to
2 the captains, so if they're involved in the illegal activities,
3 a certain percentage of their profits have to go up to the
4 captain. So the bigger the crew, the more money the captain
5 generates.
6 Q. All right. Let's look at the next level in the diagram,
7 which is referred to here as soldiers. Are there other -- why
8 don't you tell us what a soldier is and if there are other
9 names by which they're referred.
10 A. Right. A soldier is an inducted member. They're part of
11 the family. Other names that they go by are goodfellas,
12 wiseguys, bud men, men of honor. Within Cosa Nostra they refer
13 to somebody that's made as somebody that's straightened out.
14 They also refer to -- within Cosa Nostra themselves, they call
15 somebody that's inducted amica nostra, or "a friend of ours."
16 Q. Okay. So is being straightened out and being made, are
17 those synonymous terms?
18 A. Yes, they are.
19 Q. And meaning that they're soldiers?
20 A. They've gone through a ceremony and they're inducted in
21 that family.
22 Q. Now can anyone become a made member of Cosa Nostra?
23 A. No. There is criteria.
24 Q. What are the criteria?
25 A. You have to be a male gender, you have to be of Italian

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1 descent. In some families it's a hundred percent Italian on
2 your mother and father's side, but in all families it's at
3 least on your father's side. And you have to be sponsored or
4 proposed by a current member of that family. They have to
5 speak up for you to the boss of that family.
6 Q. Now what does somebody usually have to do before he can get
7 proposed for membership?
8 A. Well, when you're proposed, that person that's a member has
9 to think enough of you to try to put you up for membership.
10 It's considered the highest honor, for somebody that's involved
11 in that type of life. So it's usually a longstanding
12 relationship. It's common knowledge within Cosa Nostra that
13 usually you get inducted, or made, for two reasons. You either
14 have to be a good earner or you have to be what they call
15 capable; somebody that's capable of violence or has committed
16 murders for the family.
17 Q. Can you tell us what the process is for becoming a made
18 member.
19 A. Yes. If you're proposed by an active member of a
20 particular family and the boss of that family approves of that
21 person becoming made, in New York, a list is sent from that
22 family to the other four families for their approval. Upon
23 their approval of this person's induction and at the boss's
24 choosing or the personal representative of the boss, they open
25 the books. That's the Cosa Nostra term for inducting new

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1 members.
 2 Q. Are there actual physical books, that you're aware of?
 3 A. No.
 4 Q. Historically, what happens at an induction?
 5 A. Well, at the -- it's supposed to be the most secret of
 6 induction ceremonies. They protect it with all their
 7 resources. On the day of an induction, the person that's
 8 proposed is brought to a location where the hierarchy of that
 9 family's high -- if the boss is incarcerated or incapacitated,
 10 representatives, high -- high-ranking officials from that
 11 family are usually present, and sometimes the person that
 12 proposes that person, whether it be a soldier or a captain, is
 13 there also.
 14 Usually they're brought into a room -- This is
 15 historically. They're brought into a room where there's a gun
 16 and a knife on the table, and the person to be inducted is
 17 asked if they are willing to kill for Cosa Nostra, if they are
 18 willing to put Cosa Nostra before all other things in their
 19 life. If they agree, they usually take out a piece of paper or
 20 a picture of a saint, they prick the new member's finger, a
 21 couple of drops of blood placed on the paper or the saint,
 22 they're lit on fire and placed in the new member -- in the palm
 23 of their hand, and they have to recite that they should burn in
 24 hell if they do anything against any members of Cosa Nostra; if
 25 they disclose any information of any member of Cosa Nostra,

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94elpri5 Carillo - direct
 1 they should burn in hell. Then usually a ranking member will
 2 explain the rules of Cosa Nostra to this new inductee.
 3 Q. And --
 4 A. Then -- Yes, I'm sorry.
 5 Q. What are the cardinal rules of Cosa Nostra?
 6 A. Well, when they're reciting -- when the saint or the paper
 7 is burning in their hands, they call that the oath of omertà,
 8 silence. Then the rules are explained to them, several rules,
 9 that you have to put Cosa Nostra above all else in your life.
 10 Sometimes they use an example, that if you're by the bedside of
 11 an ailing mother and a ranking person in Cosa Nostra called you
 12 in, there's no excuses, you have to come.
 13 They also inform the new member that if somebody was
 14 to inform on Cosa Nostra, whether it be a blood relative of the
 15 new inductee, it could be a brother or an uncle, a son, and
 16 Cosa Nostra asks them to kill them for the family, they would
 17 have to do so.
 18 They're also told that they have to put on record all
 19 illegal and legal activities that they're involved with, so
 20 that their captain is aware of all the money that that new
 21 member is generating.
 22 Q. And what does it mean to put it on record?
 23 A. On record is a term that you'll hear in Cosa Nostra for
 24 anything that's public between a member and his captain or the
 25 hierarchy of the family.

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 1 Q. Are there any other rules that are explained?
 2 A. Yes. If a Cosa Nostra member is involved with any females
 3 of another Cosa Nostra member's [sic], it has to be with good
 4 intentions. It's high on their list to respect females.
 5 They're not supposed to deal with narcotics or government

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6 bonds.
 7 Q. Are these rules broken?
 8 A. All the time.
 9 Q. If a made member breaks the rules, are there penalties that
 10 are recognized within organized crime?
 11 A. Yes.
 12 Q. What are the range of penalties?
 13 A. A made member -- only a made member can be what they call
 14 shelved. It's a form of discipline in lieu of killing that
 15 person. What they do is they strip the powers of that made
 16 member to make any money through illegal enterprises, and the
 17 word is supposed to go out to all other members of Cosa Nostra
 18 not to respect that person, not to have meetings or what they
 19 call sit-downs with them, if that person calls on it.
 20 Q. And since you brought it up, you mentioned the term
 21 sit-down, what is a sit-down?
 22 A. A sit-down is the way Cosa Nostra settles their disputes,
 23 but there's a criteria for it. If a soldier has a beef with
 24 another soldier, they can meet. If a soldier has a dispute
 25 with a captain, then that other soldier has to get his captain

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1 to meet with the other captain. So the ranks have to be the
 2 same. If a boss or somebody on the administration is settling
 3 the dispute with another family, they have to meet with
 4 somebody on the administration of the other family.
 5 Q. All right. We were talking about the possible range of
 6 penalties if a made member breaks the rules of Cosa Nostra.
 7 Besides being shelved, what are the other penalties that a made
 8 member could face for breaking the rules?
 9 A. Well, they could be verbally disciplined, they could have
 10 certain illegal activities taken away from them, or they could
 11 be killed. The one thing that they -- Cosa Nostra is not
 12 supposed to do to another member under any circumstances is to
 13 raise their hand to one another, whether they did something
 14 wrong or not. So you won't often see a Cosa Nostra member
 15 striking another Cosa Nostra member, no matter what the
 16 infraction. They would kill them, usually, before they would
 17 do that.
 18 Q. Now are you familiar with something called the Commission?
 19 A. Yes.
 20 Q. What is that?
 21 A. Well, the Commission was formed many years ago where the
 22 heads of the five families, the bosses of the five families,
 23 would meet periodically to set policy in the New York area to
 24 use their influence with one another rather than to be violent
 25 with one another.

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1 Q. And what role historically has the Commission played in
 2 permitting or not permitting the making of new members?
 3 A. Well, sometimes it's discussed on the Commission whether to
 4 open the books and induct new members or not to.
 5 Q. Historically have there been periods of time where the
 6 books were closed?
 7 A. One in particular, yes.
 8 Q. And when was that?
 9 A. In the late 1950s, somewhere around 1958, to 1978, the
 10 books were closed in all five New York families.

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11 Q. Now going back to our diagram, we've talked about the
 12 administration, the capos, soldiers. Let's now talk about
 13 associates. What is an associate?
 14 A. An associate is somebody of any ethnic background or any
 15 gender that's involved in criminal activity with a member of
 16 organized crime or they could be involved in a legitimate
 17 business as a front to launder money with them or just to be a
 18 front person in a particular business.
 19 Q. What terms are used to describe the relationship between an
 20 associate and a made organized crime member?
 21 A. When an associate is under the protection of being what
 22 they call serviced by a made member, usually you'll hear, "I'm
 23 with so-and-so" or "I'm around them." So "with" and "around"
 24 are the terms that a close associate would use to be on record,
 25 what they call on record with a made member.

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1 Q. What are the advantages to the associate of being on record
 2 with a made member?
 3 A. Well, in return for giving a certain percentage of the
 4 profits from illegal activities to the members of the family or
 5 to the family, they in turn receive protection and influence
 6 from that family. What that means is basically if you're
 7 involved in an illegal enterprise and you're out there
 8 independent, you're always at a risk to be extorted by members
 9 of organized crime if they find out you're involved in
 10 bookmaking or, for instance, a loan sharking operation. When
 11 you're with somebody or around somebody and on record, you're
 12 under their protection, so if you are approached by another
 13 member, you could just refer them to that member and the
 14 problem will be resolved.
 15 Q. Now are there any advantages to being a made member over an
 16 associate?
 17 A. Yes.
 18 Q. What are those?
 19 A. Well, becoming a made member in Cosa Nostra, it's also said
 20 at your induction, you're in it for life. You're also under
 21 the protection in a way different from an associate. In order
 22 for you to be killed in Cosa Nostra by another member, once
 23 you're an inducted member, they would have to get the
 24 permission of your boss. Only your boss can give the okay for
 25 you to be killed. That's one advantage.

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1 And then you're actually part of something. So in the
 2 event that you're not able to generate money for yourself,
 3 sometimes other members will give you activities so that you
 4 would -- the way they refer it is to give you an earn, to allow
 5 you to earn money.
 6 Q. Okay. Now earlier we discussed penalties that a made
 7 member could face for breaking Cosa Nostra rules. Are there
 8 penalties for associates who commit infractions in Cosa Nostra
 9 rules?
 10 A. Yes.
 11 Q. And what could those penalties be?
 12 A. Well, as opposed to a made member, they could chase you.
 13 That means they could just give you an ultimatum not to come
 14 around anymore, to give up your end of the illegal enterprise
 15 that they're involved with, they could physically hurt you by

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16 assaulting you, and they could kill you.
 17 Q. What are some of the reasons that result in associates
 18 being disciplined?
 19 A. I mean, it could range from one gamut to the other. The
 20 biggest infraction is usually stealing from a member,
 21 disrespecting a member, just not following the protocol that
 22 that member desires from that associate.
 23 Q. Okay. Now looking at the diagram, you explained earlier
 24 that a capo supervises a crew. To what extent can associates
 25 be part of a capo's crew?

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 1 A. They are -- they are part of a crew if they're on record or
 2 what they consider close associates. So a captain's crew, it's
 3 both made members that are assigned to the captain and close
 4 associates.
 5 Q. Can close associates report directly to capos?
 6 A. Sure.
 7 Q. In terms of the eligibility requirements, do you have to be
 8 Italian to be an associate of the Mafia?
 9 A. No.
 10 Q. And is there any induction ceremony for associates?
 11 A. No, there's not.
 12 Q. All right. Investigator Carillo, you mentioned earlier
 13 that you've conducted physical surveillance at social clubs.
 14 What are social clubs?
 15 A. Social club's usually a storefront, it's a location that's
 16 opened up by either a Cosa Nostra member or an associate and --
 17 and it's a meeting place, historically it's been a meeting
 18 place for members and associates, and historically it's always
 19 been a place where they feel comfortable exchanging monies from
 20 operations to pay up or to pay tribute to their peers.
 21 Q. Where in New York City have social clubs been located?
 22 A. In all five boroughs and the suburbs.
 23 Q. All right. I'm going to ask you now about some additional
 24 organized crime technol -- terminology.

First of all, are you familiar with the term "friend"
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 1 or "friend of mine" or "friend of ours"?
 2 A. Yes.
 3 Q. And what do those terms refer to in an organized crime
 4 context?
 5 A. "A friend of mine" means exactly what it sounds. Anybody
 6 can say that. When a Cosa Nostra says "friend of ours,"
 7 there's a significance to it. When you're inducted into the
 8 family, it's usually explained to you that you can never
 9 introduce yourself to another made member; you have to be
 10 introduced by a third party that's a made member that knows
 11 both parties. And the way that introduction would take place,
 12 if one person is made and he knows that the other two people
 13 are made and they need to meet to conduct business, then the
 14 third party would introduce the two people as, he's a friend of
 15 ours, and he's a friend of ours, and then they know that
 16 they're inducted members of Cosa Nostra.
 17 Q. Are you familiar with the terms "kicking up" or "tribute"?
 18 A. Yes.
 19 Q. Okay. First of all, do those terms mean the same thing?
 20 A. Yes.

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21 Q. What do they mean?
 22 A. It's just whatever illegal activity you're involved with,
 23 paying money up through the chain of command. The money always
 24 goes up through a Cosa Nostra family, up --
 25 Q. Who do the associates kick up to?

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 1 A. Well, it's all according. Sometimes the money could go
 2 directly to a soldier or a captain or somebody on the
 3 administration. It's all according to those phrases that I
 4 mentioned before, who they're around or with or who they're on
 5 record with.
 6 Q. What are the range of consequences that a member or
 7 associate could face for failing to kick up?
 8 A. Well, as I had mentioned before, you can be verbally
 9 chastised. For a member and an associate it's different. You
 10 could be chased, if you're an associate; you could be shelved,
 11 if you're a made member; and either one could be killed if they
 12 feel the infraction is severe enough.
 13 Q. Are you familiar with the term "walk and talk"?
 14 A. Yes.
 15 Q. What is a "walk and talk"?
 16 A. It's just two members or associates of organized crime
 17 walking outside a location to discuss illegal activity to avoid
 18 electronic eavesdropping, whether it be bugs or wiretaps, that
 19 type of thing.
 20 Q. All right. What terminology, Investigator Carillo, is used
 21 in the Mafia to refer to murder?
 22 A. You'll hear phrases like clip or whack, they'll refer to it
 23 amongst themselves as a piece of work; you'll hear one member
 24 say to another member, that guy's done work for the family. So
 25 that's a main phrase that they use for murders within

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 1 themselves.
 2 Q. What is the protocol regarding the authorization of murder?
 3 A. Authorized murders come from the top, if they're, you know,
 4 on record or authorized or sanctioned murders. Whoever's the
 5 boss or acting for him has to approve any member in that family
 6 to partake in a murder.
 7 Q. Can you explain the difference between a sanctioned murder
 8 and an unsanctioned murder within organized crime.
 9 A. Sure. A sanctioned murder is what I said, with permission
 10 from their superiors. An unsanctioned murder, you also hear
 11 terminology like a sneak murder, that's somebody taking it upon
 12 themselves to kill somebody without permission of their
 13 superiors.
 14 Q. Now earlier you referred to bookmaking and loan sharking.
 15 So first, why don't you explain what bookmaking means.
 16 A. Well, a bookmaker is somebody -- well, in Cosa Nostra
 17 terms, it's somebody who's associated with them or sometimes a
 18 member that sets up a location where they accept illegal
 19 wagers, usually over the telephone, sometimes over the
 20 computer, on sporting events and sometimes horses.
 21 Q. And what is loan sharking?
 22 A. Loan sharking, you'll also hear terms what they call a
 23 shylock. That's, again, somebody that puts loans out on the
 24 street. It's not a financial institution. They usually get
 25 high rates of interest, and that interest has to be paid on a

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1 weekly basis.
2 Q. Moving on to some other terms, are you familiar with the
3 term shakedown?
4 A. Yes.
5 Q. What is a shakedown?
6 A. It's an extortion.
7 Q. Historically in New York City, in what industries have
8 shakedowns been most prevalent?
9 A. You had many extortions in the carting industry,
10 construction industry, restaurants, bars, catering halls,
11 funeral parlors, any place -- if the business is in an area
12 where Cosa Nostra is prevalent, the more risk of shakedowns or
13 extortions would occur.
14 Q. Are you familiar with the term "score" or "a score"?
15 A. Yes.
16 Q. And what does a score refer to?
17 A. A score is usually not an ongoing illegal enterprise, it's
18 usually a one-shot deal where a large amount of money is
19 brought in. It's not an ongoing operation.
20 Q. All right. I'd like now to focus specifically on the
21 Genovese crime family. You testified earlier that this family
22 was named for Vito Genovese. When was he boss?
23 A. From approximately 1957 until his death in 1969.
24 Q. Have there been other bosses since then?
25 A. Yes.

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94elpri5 Carillo - direct
1 Q. Is the Genovese family still active?
2 A. Yes.
3 Q. How does it compare in size to the other organized crime
4 families?
5 MR. STAVIS: Objection, your Honor.
6 THE COURT: What's the relevance of that?
7 MS. ZORNBERG: Just laying some groundwork about the
8 family, its existence and scope.
9 MR. STAVIS: I have an objection. If your Honor wants
10 to hear my objection at the sidebar, I'll state it or...
11 THE COURT: You should just go on. Go on, to your
12 next question.
13 MS. ZORNBERG: Next question? All right.
14 BY MS. ZORNBERG:
15 Q. Approximately how many made members are in the Genovese
16 crime family?
17 A. Over 200.
18 Q. And how does that number break down within the various
19 ranks we've discussed?
20 A. Well, there's approximately 20 captains or caporegimes with
21 crews, you have the administration, either acting or official
22 positions, and the remainder are soldiers or made men in the
23 family.
24 Q. Now that number of 200 that you said, approximately --
25 A. 200 to 250, somewhere in there.

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1 Q. Okay. Does that include associates?
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- 2 A. No.
 3 Q. How many associates are there approximately with or around
 4 the various Genovese crews?
 5 A. At least a couple of thousand.
 6 MS. ZORNBERG: No further questions, your Honor.
 7 CROSS-EXAMINATION
 8 BY MR. STAVIS:
 9 Q. Investigator Carillo, drawing your attention to
 10 Government's Exhibit 40, the position of capo, can you
 11 please -- that's directly under the administration of the Mafia
 12 family, is that correct?
 13 A. That's correct.
 14 Q. And that's a very powerful position; could we agree with
 15 that?
 16 A. Yes.
 17 Q. And there aren't that many captains with regard to the
 18 whole Mafia family -- well, let me withdraw that.
 19 You testified that there are, in the Genovese crime
 20 family, there are 200 to 250 formal made members, correct?
 21 A. That's correct.
 22 Q. And you testified that there are only 20 capos, correct?
 23 A. Yes.
 24 Q. And you testified that there are a couple of thousand
 25 associates, correct?

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Carillo - cross

- 1 A. Yes.
 2 Q. So if you're a capo, then you have potentially thousands of
 3 people who can do things for you, correct?
 4 A. Well, when I said 2,000 associates, they're not all on
 5 record or considered close associates. So the number -- it's
 6 significant, but it would be less.
 7 Q. But a capo has a lot of people that he could call upon to
 8 do things for him, is that fair to say?
 9 A. It's fair to say, but it's on a captain-by-captain basis.
 10 Some captains have many people, some have less, so it's all
 11 according to who you're talking about.
 12 Q. But it's a high up -- it's a high up position and there are
 13 many lower positions, is that correct?
 14 A. Yes, yes.
 15 Q. And the capo is a high position where you have these
 16 sit-downs that you spoke of, correct?
 17 A. Not just a captain. Any made member could have a sit-down.
 18 You could only have it with a person of the equivalent rank.
 19 Q. But a captain would have more important sit-downs than a
 20 member, is that correct?
 21 A. Not necessarily, no.
 22 Q. And you testified that a capo is in charge of a crew?
 23 A. Yes.
 24 Q. And what are the sizes of crews?
 25 A. They vary.

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Carillo - cross

- 1 Q. They vary from what to what?
 2 A. I've had as many as 15 to 20 members in a crew, I've had
 3 captains with no crew, that they'll leave this, out of
 4 respect -- Somebody that may have lost some of the soldiers
 5 that were underneath them through the years, they'll leave them
 6 at that rank just out of respect.

Exhibit H

U.S. District Court, EDNY

<p style="text-align: right;">Page 78</p> <p>1 REYNALDO TARICHE, 2 called as a witness, having been first 3 duly sworn, was examined and testified 4 as follows: 5 THE COURT: Please state your full name and 6 spell your name slowly for the record. 7 THE WITNESS: My name is Reynaldo, 8 R-E-Y-N-A-L-D-O Tariche, T-A-R-I-C-H-E. 9 THE COURT: You may proceed. 10 MR. DONOGHUE: Thank you, your Honor. 11 12 13 DIRECT EXAMINATION 14 BY MR. DONOGHUE: 15 Q. Good afternoon, Agent Tariche. 16 A. Good afternoon. 17 Q. Sir, you're currently employed by the FBI, correct? 18 A. Yes. 19 Q. And how are you employed by the FBI? 20 A. I'm assigned to the Long Island gang task force. 21 Q. How long have you been a Special Agent with the FBI? 22 A. Over 19 years. 23 Q. Prior to joining the FBI, how were you employed? 24 A. I was employed in a brokerage firm in Manhattan, New 25 York.</p>	<p style="text-align: right;">Page 80</p> <p>1 division of the FBI. 2 Q. How long were you in Long Beach? 3 A. I was in Long Beach for five years, again 1990 and 4 1995. 5 Q. What was follow on assignment? 6 A. In 1995, I was transferred to the Brooklyn-Queens 7 resident agency or satellite office of the New York 8 division of the FBI. 9 Q. And where were you assigned there? 10 A. I was assigned to a drug money laundering task force 11 from 1995 through 2004. 12 Q. And where were you assigned in 2004? 13 A. In 2004 I was assigned to the Long Island resident 14 agency or satellite office the New York division of the 15 FBI to the Long Island gang task force. 16 Q. While you were assigned in the Long Beach, California 17 resident agency, were you a member of any task force? 18 A. Yes. I was a member of the violent crimes task 19 force. 20 (Court alarm sounds.) 21 THE COURT: I will find out what that is all 22 about. Sometimes it is a false alarm. 23 (Pause in proceedings.) 24 THE COURT: Since I have been in this building 25 from the year 2000 when it opened, there were a million</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. Could you please just briefly explain to us what your 2 formal education background is? 3 A. Yes. I have a BS, Bachelor of Science in finance 4 from Boston College. 5 Q. Just generally what type of formal training have you 6 received over your 19 years as an FBI agent? 7 A. As an FBI agent, myself and all agency attend 16 week 8 training academy at Quantico, Virginia, where we learn the 9 duties of an FBI agent. In addition to that, we are also 10 do continuing education courses at Quantico and other 11 venues throughout the United States. 12 Q. What type of continuing education courses have you 13 taken? 14 A. I've taken the safe streets training course, as well 15 as numerous other special weapons in tactics courses. 16 THE COURT: I didn't get the first one. 17 A. Special weapons and tactics. 18 Q. Have you taken any courses or training specifically 19 relating to street gang investigations? 20 A. Yes. That safe streets task force which I mentioned. 21 Q. Can you briefly describe the different assignments 22 that you've had since joining the FBI? 23 A. Yes, I joined the FBI in 1990. 24 At that time I was assigned to the Long Beach 25 resident agency or satellite office of the Los Angeles</p>	<p style="text-align: right;">Page 81</p> <p>1 alarms, none of which were real. So what we're going to 2 do is just so I can check, we're going to ask you to go 3 into the jury room and wait. 4 Now, my courtroom deputy is going down to get 5 your lunch just as this when off. So now not only are we 6 inconvenienced, we're prevented from eating. So I want 7 you to recess and go into the jury room and I will let you 8 know. When you recess, we do it in the following manner, 9 the rear row goes out first, followed by the front row. 10 Please don't be concerned. I'm almost sure it doesn't 11 mean anything. Please recess yourself. 12 (Whereupon, the jury retired from the 13 courtroom.) 14 THE COURT: It takes a short while to learn 15 about why it's a false alarm. Do you know anything about 16 it. 17 THE COURT SECURITY OFFICER: They want everybody 18 out, Judge. 19 THE COURT: They want everybody out? Why? 20 THE COURT SECURITY OFFICER: I don't know if 21 it's a drill. 22 THE COURT: It's not a drill. It's a false 23 alarm probably. 24 (Court security officer speaks to the Court at 25 this point.)</p>

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<p style="text-align: right;">Page 82</p> <p>1 THE COURT: They want all of you out. I'm sure 2 it's going to be a meaningless trip, but I follow 3 instructions. So you all have to go out. We are probably 4 recessed until 2:15. 5 MR. TOMAO: Thank you, your Honor. 6 (Luncheon recess taken at this point.) 7 (Continued on next page;) 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 84</p> <p>1 D-E-S-T-E-F-A-N-O. 2 THE COURT: Have a seat, Mr. Destefano. 3 Keep your voice up and speak into the microphone 4 loudly. 5 You may proceed. 6 MR. DURHAM: Thank you, your Honor. 7 8 DIRECT EXAMINATION 9 BY MR. DURHAM: 10 Q. Good afternoon, sir? 11 A. Good afternoon. 12 Q. What do you do for a living? 13 A. I deliver flowers. 14 Q. What is the name of the business? 15 A. Strictly Roses. 16 THE COURT: I'm sorry, I can't hear you. 17 THE WITNESS: Strictly Roses. 18 BY MR. DURHAM: 19 Q. Do you just deliver roses or other types of flowers 20 as well? 21 A. All different kinds of bouquets, flowers, roses. 22 Q. How long have you been operating that business? 23 A. 10 years. 24 Q. Where do you buy your flowers from? 25 A. I buy them from the wholesaler in Suffolk, Deer Park.</p>
<p style="text-align: right;">Page 83</p> <p>1 AFTERNOON SESSION 2 3 THE CLERK: Jury entering. 4 (The jury is present.) 5 THE COURT: Please be seated, members of the 6 jury. 7 You may proceed. 8 MR. DURHAM: Your Honor, with the Court's 9 permission and the consent of the defendant, the 10 government would ask to call Vincent Destefano. 11 THE COURT: You're interrupting the testimony of 12 the previous witness, correct? 13 MR. DURHAM: Yes, your Honor 14 THE COURT: Members of the jury, we will take a 15 new witness. We will get back to the other witness. 16 Right now, we're taking a new witness. 17 18 VINCENT DESTEFANO, 19 called as a witness, having been first 20 duly sworn, was examined and testified 21 as follows: 22 23 THE CLERK: Please state your name and spell 24 your last name slowly for the record. 25 THE WITNESS: Vincent DeStefano,</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Where do you sell the flowers? 2 A. Nassau County, Suffolk County. 3 Q. The flowers that you sell, are they, if you know, 4 grown here in New York or elsewhere? 5 A. Most of them are grown out of the country. 6 Q. Do you know where? 7 A. Mexico, South America. 8 Q. When they're imported into the country, do you know 9 if they come straight to New York or do they go somewhere 10 else first? 11 A. Most of them go to Miami. 12 MR. TOMAO: Objection, your Honor. 13 THE COURT: On what grounds? 14 MR. TOMAO: On the grounds of there's no 15 foundation for how he would know, your Honor. It could be 16 hearsay. 17 MR. DURHAM: I'll rephrase the question as if 18 you know. 19 MR. TOMAO: It still calls for hearsay, your 20 Honor. 21 Objection. 22 THE COURT: Well, other than people telling you, 23 is there any other way you know that the flowers come from 24 out of the country, Mexico and South America? 25 THE WITNESS: Yeah.</p>

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<p style="text-align: right;">Page 94</p> <p>1 Q. Do you know if the police had opened that panel?</p> <p>2 A. No, they didn't.</p> <p>3 Q. So you don't know how it got opened?</p> <p>4 A. No.</p> <p>5 Q. By the way, do you recall if you had 123,000 miles on</p> <p>6 the van when it was stolen?</p> <p>7 A. I don't remember.</p> <p>8 MR. TOMAO: No further questions.</p> <p>9 Thank you, your Honor.</p> <p>10 THE COURT: Anything else?</p> <p>11 MR. DURHAM: Just one question.</p> <p>12</p> <p>13 REDIRECT EXAMINATION</p> <p>14 BY MR. DURHAM:</p> <p>15 Q. The loss of the van, the loss of your account book,</p> <p>16 what impact did that have on your business?</p> <p>17 MR. TOMAO: Objection, your Honor.</p> <p>18 THE COURT: Sustained.</p> <p>19 BY MR. DURHAM:</p> <p>20 Q. Did the loss of the van and your account book have</p> <p>21 any impact on your business?</p> <p>22 MR. TOMAO: Objection.</p> <p>23 THE COURT: Sustained.</p> <p>24 MR. DURHAM: No further questions, your Honor.</p> <p>25 Anything else?</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. What years were you there?</p> <p>2 A. 1990 to 1995.</p> <p>3 Q. Were you assigned to any task forces while you were</p> <p>4 out there?</p> <p>5 A. Yes.</p> <p>6 I was assigned to the Violent Crimes Task Force.</p> <p>7 Q. And what generally was the mission of the Violent</p> <p>8 Crimes Task Force?</p> <p>9 A. The mission of our Task Force was to investigate</p> <p>10 crimes, federal crimes, involving violence to include</p> <p>11 kidnappings, gang activities, bank robberies, drug</p> <p>12 activities.</p> <p>13 Q. And approximately how long were you on that Task</p> <p>14 Force?</p> <p>15 A. Five years.</p> <p>16 Q. What agencies provided personnel for that Task Force?</p> <p>17 A. It was led by the FBI. We also had members of the</p> <p>18 Los Angeles County Sheriff's Department. And we also had</p> <p>19 members of the Long Beach California Police Department, as</p> <p>20 well as members from the Bureau of Narcotics Enforcement,</p> <p>21 State of California.</p> <p>22 Q. Just roughly, approximately how many cases did you</p> <p>23 work while you were on the Task Force?</p> <p>24 A. Over 100.</p> <p>25 Q. Just generally, what did you do in the course of</p>
<p style="text-align: right;">Page 95</p> <p>1 MR. TOMAO: No, your Honor.</p> <p>2 Thank you.</p> <p>3 THE COURT: You may step down.</p> <p>4 (The witness steps down.)</p> <p>5 THE COURT: Are you recalling that witness?</p> <p>6 MR. DONOGHUE: Yes.</p> <p>7 We recall Special Agent Tariche, your Honor.</p> <p>8</p> <p>9 REYNALDO TARICHE,</p> <p>10 called as a witness, having been previously</p> <p>11 duly sworn, was examined and testified further</p> <p>12 as follows:</p> <p>13</p> <p>14 MR. DONOGHUE: May I proceed, your Honor?</p> <p>15 THE COURT: Yes.</p> <p>16</p> <p>17 DIRECT EXAMINATION (CONT.)</p> <p>18 BY MR. DONOGHUE:</p> <p>19 Q. Agent Tariche, I remind you that you're still under</p> <p>20 oath.</p> <p>21 A. Yes.</p> <p>22 Q. Sir, when we left off, you indicated that your first</p> <p>23 assignment was at the Long Beach satellite office out of</p> <p>24 Los Angeles, correct?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 97</p> <p>1 those investigations?</p> <p>2 A. In the course of our investigation we conduct</p> <p>3 arrests, search, surveillance, developing of informants,</p> <p>4 assisting the U.S. Attorney's office in prosecuting cases</p> <p>5 and witnesses, and the general duties of an FBI agent.</p> <p>6 Q. I think you also indicated that since 2004, you have</p> <p>7 been assigned to a Task Force here on Long Island?</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. What Task Force is that?</p> <p>10 A. That's the FBI Long Island Gang Task Force.</p> <p>11 Q. What agencies currently have personnel assigned to</p> <p>12 that Task Force?</p> <p>13 A. Currently we have the FBI leading, New York State</p> <p>14 Police, Nassau County Police Department, Nassau County</p> <p>15 Sheriff's Department, Hempstead Police Department, as well</p> <p>16 as the Suffolk County Police Department.</p> <p>17 Q. Generally, what is the mission of that Task Force?</p> <p>18 A. The mission of our Task Force is to combat and</p> <p>19 investigate violent crimes perpetrated by gangs here on</p> <p>20 Long Island.</p> <p>21 Q. From your work on the Task Force, do you know what</p> <p>22 gangs we have here on Long Island?</p> <p>23 A. Yes. Here on Long Island we have MS-13, SWP, which</p> <p>24 is Salvadorians With Pride, Bloods, Crips and some</p> <p>25 motorcycle gangs including the Hells Angels.</p>

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<p style="text-align: right;">Page 98</p> <p>1 Q. From your work on the Task Force, do you know what 2 the largest gang on Long Island is?</p> <p>3 A. Yes.</p> <p>4 MR. TOMAO: Objection, your Honor.</p> <p>5 THE COURT: Overruled.</p> <p>6 A. The largest gang is the MS-13.</p> <p>7 Q. What does MS-13 stand for?</p> <p>8 A. It stands for Mara, M-A-R-A, Salvatrucha, 9 S-A-L-V-A-T-R-U-C-H-A.</p> <p>10 Q. Do you and other members of the Task Force work many 11 cases related to the MS-13?</p> <p>12 A. Yes.</p> <p>13 I work exclusively MS-13 cases assisting other 14 agents from my squad in other matters, but we work MS-13, 15 yes.</p> <p>16 Q. And what types of activities have you undertaken to 17 gain an understanding of the MS-13 street gang?</p> <p>18 A. I investigated cases personally.</p> <p>19 I have conducted both physical and audio 20 surveillance of the MS-13 meetings.</p> <p>21 I have listened to many hours of tape recordings 22 of MS-13 members, both of their meetings and of telephone 23 recordings they have had.</p> <p>24 I have conducted arrests of MS-13 members.</p> <p>25 I have conducted searches of MS-13 locations in</p>	<p style="text-align: right;">Page 100</p> <p>1 A. I have worked with law enforcement agencies from 2 Central America, from El Salvador specifically.</p> <p>3 Q. Aside from your case-based law enforcement 4 activities, have you done anything else to educate 5 yourself about the MS-13?</p> <p>6 A. Yes.</p> <p>7 I have read numerous journals, articles and 8 reporting on the MS-13, as well as I have observed videos 9 of the MS-13 including documentaries as such.</p> <p>10 Q. Have you ever traveled to gain a great knowledge of 11 the MS-13?</p> <p>12 A. Yes.</p> <p>13 I have been to El Salvador four times in 14 furtherance of investigations and conferences which I have 15 attended in El Salvador.</p> <p>16 Q. Generally, what did you do on those trips to El 17 Salvador?</p> <p>18 A. On three of the trips I attended international gang 19 conferences regarding MS-13, and exchanged reporting 20 information with law enforcement agencies from around the 21 United States and Central America and Mexico.</p> <p>22 I have also gone to neighborhoods in El Salvador 23 and observed MS-13 members there as well as their 24 graffiti.</p> <p>25 And I have additionally viewed videos of MS-13</p>
<p style="text-align: right;">Page 99</p> <p>1 which paraphernalia has been found.</p> <p>2 I have reviewed and translated letters and 3 correspondence between MS-13 members.</p> <p>4 I have exchanged information and reporting with 5 other local, federal and state police departments as well 6 as international police departments.</p> <p>7 And I have also conducted interviews of MS-13 8 members.</p> <p>9 Q. Approximately how many MS-13 members have you 10 arrested?</p> <p>11 A. I have arrested approximately 20.</p> <p>12 Q. And approximately how many MS-13 members or 13 associates have you interviewed?</p> <p>14 A. Approximately 40.</p> <p>15 Q. While you have been stationed in New York, have you 16 ever worked with law enforcement officers from other 17 jurisdictions on MS-13 matters?</p> <p>18 A. Yes, I have.</p> <p>19 Q. What jurisdictions?</p> <p>20 A. I have worked with jurisdictions in California, 21 Texas, Carolinas and Virginia.</p> <p>22 Q. Have you worked with any outside of the United 23 States?</p> <p>24 A. Yes, I have.</p> <p>25 Q. Where?</p>	<p style="text-align: right;">Page 101</p> <p>1 members committing extortions down in El Salvador and have 2 generally exchanged information with the law enforcement 3 agencies in Central America, specifically El Salvador.</p> <p>4 Q. Have you gone to any prisons in El Salvador in 5 furtherance of the MS-13 investigations?</p> <p>6 MR. TOMAO: Objection, your Honor.</p> <p>7 THE COURT: Overruled.</p> <p>8 A. Yes.</p> <p>9 I have been to a prison in El Salvador that's 10 called Zacatecouloca, Z-A-C-A-T-E-C-O-U-L-O-C-A.</p> <p>11 And I have been to the prisons, and that prison 12 specifically, in El Salvador which house many MS-13 13 members.</p> <p>14 Q. Aside from the conferences in El Salvador, have you 15 ever attended any seminars or conferences related to the 16 MS-13 here in the United States?</p> <p>17 A. Yes.</p> <p>18 I have attended approximately five seminars here 19 in the United States related to MS-13.</p> <p>20 Q. Have you ever served as an instructor at such 21 seminars?</p> <p>22 A. Yes, I have.</p> <p>23 Q. Generally, what types of instructions have you 24 provided?</p> <p>25 A. I have provided case presentations on investigations</p>

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<p style="text-align: right;">Page 102</p> <p>1 that I have conducted, as well as general MS-13</p> <p>2 information.</p> <p>3 Q. You indicated earlier that you listened to many live</p> <p>4 and recorded conversations between MS-13 members.</p> <p>5 What language do they primarily use?</p> <p>6 A. They primarily use Spanish.</p> <p>7 Q. Can you speak, read and write Spanish?</p> <p>8 A. Yes, I can.</p> <p>9 Q. How did you first learn Spanish?</p> <p>10 A. I grew up in a bilingual home.</p> <p>11 My parents are Cuban immigrants.</p> <p>12 Q. Have you ever testified as an expert witness before?</p> <p>13 A. Yes, I have.</p> <p>14 Q. Was that in state or federal court?</p> <p>15 A. Federal court.</p> <p>16 Q. What was the subject matter you testified about as an</p> <p>17 expert?</p> <p>18 A. MS-13.</p> <p>19 MR. DONOGHUE: Your Honor, at this time, may we</p> <p>20 tender the witness?</p> <p>21 THE COURT: Yes.</p> <p>22 MR. DONOGHUE: At this time, we tender the</p> <p>23 witness as an expert in the history, structure and symbols</p> <p>24 of the MS-13 street gang.</p> <p>25 MR. TOMAO: I object for the reasons stated</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Have you been able to formulate an opinion regarding</p> <p>2 who the members of the gang generally are?</p> <p>3 MR. TOMAO: Objection, your Honor.</p> <p>4 THE COURT: Overruled.</p> <p>5 A. The members of the gang are generally from El</p> <p>6 Salvador or Honduras.</p> <p>7 Q. Have you been able to formulate an opinion regarding</p> <p>8 how the gangs are organized?</p> <p>9 MR. TOMAO: Objection.</p> <p>10 THE COURT: Overruled.</p> <p>11 A. The gang is organized into chapters or cliques,</p> <p>12 C-L-I-Q-U-E-S.</p> <p>13 Q. Do the cliques use different titles to identify</p> <p>14 themselves?</p> <p>15 A. Yes, they do.</p> <p>16 Q. Could you explain how they do that?</p> <p>17 MR. TOMAO: Objection.</p> <p>18 THE COURT: Overruled.</p> <p>19 A. Specifically here on Long Island, certain cliques or</p> <p>20 chapters will take the name of their town.</p> <p>21 For example, the Hempstead clique or chapter</p> <p>22 would be known as the Hempstead Locos Salvatruchas, or</p> <p>23 HSL.</p> <p>24 Q. Do other cliques use that same abbreviation?</p> <p>25 A. Yes, other cliques.</p>
<p style="text-align: right;">Page 103</p> <p>1 before.</p> <p>2 THE COURT: Your objection is overruled for the</p> <p>3 reasons I have stated on the record previously.</p> <p>4 MR. DONOGHUE: May I proceed?</p> <p>5 THE COURT: I find that he's qualified to be an</p> <p>6 expert on MS-13.</p> <p>7 You may proceed.</p> <p>8 MR. DONOGHUE: Thank you, sir.</p> <p>9</p> <p>10 BY MR. DONOGHUE:</p> <p>11 Q. Agent Tariche, through the work and experience you</p> <p>12 described, have you been able to formulate certain</p> <p>13 opinions regarding the MS-13 street gang?</p> <p>14 A. Yes, I have.</p> <p>15 Q. Have you been able to formulate an opinion regarding</p> <p>16 where the gang originated?</p> <p>17 A. The gang originated in Los Angeles, California.</p> <p>18 Q. Have you been able to formulate an opinion regarding</p> <p>19 where the gang currently has a presence?</p> <p>20 MR. TOMAO: Objection, your Honor.</p> <p>21 THE COURT: Overruled.</p> <p>22 A. The gang, after originating in Los Angeles,</p> <p>23 California, spread throughout the United States to include</p> <p>24 Texas, Virginia, the Carolinas, New York, as well as</p> <p>25 throughout Mexico and Central America.</p>	<p style="text-align: right;">Page 105</p> <p>1 For example, Islip would use the Islip Locos</p> <p>2 Salvatruchas.</p> <p>3 They also might use the name of a street in Los</p> <p>4 Angeles to indicate their cliques as well.</p> <p>5 Q. Have you been able to formulate an opinion regarding</p> <p>6 whether the gang holds meetings?</p> <p>7 A. Yes.</p> <p>8 Q. What's your opinion regarding that?</p> <p>9 MR. TOMAO: Objection.</p> <p>10 THE COURT: Overruled.</p> <p>11 A. My opinion is that the MS-13 conducts cliques,</p> <p>12 meetings or chapter meetings amongst a particular chapter,</p> <p>13 as well as they'll have a larger meeting called a</p> <p>14 universal which would be comprised of several different</p> <p>15 chapters meeting together.</p> <p>16 Q. Have you been able to formulate an opinion regarding</p> <p>17 whether the MS-13 uses any symbols to demonstrate</p> <p>18 membership?</p> <p>19 A. Yes.</p> <p>20 The MS-13 --</p> <p>21 MR. TOMAO: Objection, your Honor.</p> <p>22 THE COURT: Overruled.</p> <p>23 A. The MS-13 uses hand signs to demonstrate their gang</p> <p>24 affiliation to fellow members and to rivals.</p> <p>25 Q. Could you please demonstrate for us what that hand</p>

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<p style="text-align: right;">Page 110</p> <p>1 THE COURT: Okay. 2 What about the next one? 3 MR. DONOGHUE: It's similar, your Honor. 4 MR. TOMAO: Same objection. 5 THE COURT: Okay. 6 (Continued on next page.) 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 112</p> <p>1 A. No. 2 I was present while they were taken. 3 Q. Do you recall approximately what year they were 4 taken? 5 A. They were taken beginning of 2008, approximately a 6 year and a half ago. 7 Q. From your training and experience in El Salvador and 8 elsewhere, do you know if it was common to have that type 9 of graffiti in prison cells in El Salvador back in 2003? 10 A. Yes. 11 MR. DONOGHUE: Your Honor, at this time, we move 12 to admit government's exhibits 3 and 4. 13 THE COURT: Any objection? 14 MR. TOMAO: Same objection I stated at sidebar. 15 THE COURT: Those objections are overruled. 16 Government's Exhibits 1, 2, 3 and 4 in evidence. 17 (Government's Exhibits 1, 2, 3 and 4 in 18 evidence.) 19 MR. DONOGHUE: Thank you, your Honor. 20 May I bring them up on the screen, your Honor? 21 THE COURT: Surely. 22 BY MR. DONOGHUE: 23 Q. Agent Tariche, the screen in front of you as well as 24 behind you, on Government's Exhibit 1, sir, where was that 25 photograph taken?</p>
<p style="text-align: right;">Page 111</p> <p>1 (The following takes place in open court.) 2 THE COURT: You may proceed further in laying a 3 foundation for Government's Exhibits 3 and 4. 4 MR. DONOGHUE: Thank you, your Honor. 5 May we have 1 and 2 admitted at this time. 6 THE COURT: Yes. 7 Government's Exhibit 1 and 2 are admitted. 8 (Government's Exhibits 1 and 2 in evidence.) 9 10 BY MR. DONOGHUE: 11 Q. Agent Tariche, I would like to draw your attention to 12 exhibits 3 and 4. 13 Without going into details as to what you see 14 there, just generally, what do those two photographs show? 15 A. They show MS-13 graffiti on a jail cell wall in 16 Zacatecoluca. 17 Q. Did you take those photographs or were you present 18 when they were taken? 19 A. Yes. 20 MR. TOMAO: Objection, your Honor. 21 I don't know what he answered yes to. It was 22 complex. 23 MR. DONOGHUE: I'll break it down. 24 BY MR. DONOGHUE: 25 Q. Did you personally take those photographs?</p>	<p style="text-align: right;">Page 113</p> <p>1 A. It was taken in Hempstead, Long Island. 2 Q. That's in Nassau County, correct? 3 A. Yes. 4 Q. Could you just explain for us what we see in that 5 photograph? 6 A. Yes. 7 May I use the pointer to explain? 8 MR. DONOGHUE: I have a laser that might help 9 you point out some of the features. 10 Your Honor, may he step out from the stand to 11 point that out? 12 THE COURT: Yes. 13 (The witness steps down.) 14 A. This is graffiti, MS-13 graffiti here in Hempstead 15 where you could see that the letters SWP, WP have been 16 crossed out, and the M was added to the S. 13 above. 17 HLS, indicating Hempstead Locos Salvatruchas and then 18 spelled out La Mara Salvatrucha on top. 19 Q. Do we see anything else above the writing there? Do 20 you see any initials? 21 A. The letters one, three, and initials HLS and the word 22 La Mara Salvatrucha 13 with three dots next to it. 23 Q. Moving to government's exhibit 2, could you explain 24 what we see in that exhibit? 25 A. Yes.</p>

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<p style="text-align: right;">Page 114</p> <p>1 In this exhibit we see in block lettering a</p> <p>2 large M and a large S.</p> <p>3 We also see above the S Mafioso, which is a</p> <p>4 nickname for an MS-13 member.</p> <p>5 And lettering depicting other chapters or</p> <p>6 cliques.</p> <p>7 E is for El Salvador in between and then along</p> <p>8 the side other lettering BGLS.</p> <p>9 Above on the ceiling tombstones with RIP with</p> <p>10 members' names and lettering below the members' names.</p> <p>11 Q. Between the two large letters M and S, what do you</p> <p>12 see there?</p> <p>13 A. We see the El Salvadorian flag and symbols of the El</p> <p>14 Salvadorian flag.</p> <p>15 Q. And just below that?</p> <p>16 A. We see a hand sign of the MS-13 that surrounds the</p> <p>17 flag.</p> <p>18 Q. Is that the hand sign that you demonstrated earlier?</p> <p>19 A. Yes.</p> <p>20 Q. And what are the colors used to color in the M and S?</p> <p>21 A. Blue and then white on the flag in the center.</p> <p>22 Q. Where was that photograph taken?</p> <p>23 A. That was photograph was taken in the Zacatecoluca</p> <p>24 prison in El Salvador.</p> <p>25 MR. TOMAO: Excuse me, your Honor.</p>	<p style="text-align: right;">Page 116</p> <p>1 BY MR. DONOGHUE:</p> <p>2 Q. Okay. Moving on to Government Exhibit number 4,</p> <p>3 again just briefly can you tell us what you see there?</p> <p>4 A. Here we can see depictions of tombstones, for</p> <p>5 example, rest in peace, joker from ELS, and then the names</p> <p>6 of other members, Blackie, name of a cliques, Parka Vista</p> <p>7 V-I-S-T-A Locos, and more lettering on the side wall</p> <p>8 indicating members names and cliques. The name silent.</p> <p>9 Q. Okay. Thank you. If you can return to the witness</p> <p>10 stand.</p> <p>11 I'll going to put before you what's marked for</p> <p>12 identification Government Exhibits 5 through 17, ask that</p> <p>13 you take a look at those. (Hanging.)</p> <p>14 Sir, do you recognize those exhibits?</p> <p>15 A. Yes, I do.</p> <p>16 Q. So what do you recognize them to be?</p> <p>17 A. Tattoos, MS-13 members.</p> <p>18 Q. They're all photographs, correct?</p> <p>19 A. Photographs of members and their tattoos, yes.</p> <p>20 Q. And have you seen those actual tattoos on those</p> <p>21 members?</p> <p>22 A. Yes, some of them I have, yes.</p> <p>23 Q. Do those photographs fairly and accurately depict the</p> <p>24 tattoos that you saw on those individuals?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 115</p> <p>1 I was under the impression that was taken in</p> <p>2 Hempstead.</p> <p>3 Is he now saying it's taken in El Salvador?</p> <p>4 MR. DONOGHUE: Government's exhibit 2 is; yes,</p> <p>5 your Honor.</p> <p>6 MR. TOMAO: I would ask my objection to three</p> <p>7 and four also apply to two.</p> <p>8 THE COURT: Yes, and overruled.</p> <p>9 BY MR. DONOGHUE:</p> <p>10 Q. I'm going to move to Government's Exhibit 3 on the</p> <p>11 screen.</p> <p>12 Could you briefly explain what we see there?</p> <p>13 A. We see again in block lettering the M and S with a</p> <p>14 13, clique abbreviation VMLS below, 503, which is the area</p> <p>15 code of El Salvador, or the country code, and then to the</p> <p>16 left more block lettering NLCS and then MS on the ceiling.</p> <p>17 (Continued on next page.)</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 117</p> <p>1 MR. DONOGHUE: Your Honor, at this time I move</p> <p>2 to admit Government's Exhibit 5 to 17.</p> <p>3 MR. TOMAO: Your Honor, may I have a brief voir</p> <p>4 dire on this.</p> <p>5 THE COURT: Yes.</p> <p>6 Members of the jury, voir dire in this context</p> <p>7 means that the lawyer is entitled to ask questions not on</p> <p>8 cross-examination, because it's not his turn yet, but on</p> <p>9 the foundation for the admissibility of the photographs.</p> <p>10 That's what voir dire means. Go ahead.</p> <p>11</p> <p>12 VOIR DIRE EXAMINATION</p> <p>13 BY MR. TOMAO:</p> <p>14 Q. Good afternoon, Agent Tariche.</p> <p>15 A. Good afternoon.</p> <p>16 Q. You and I have met each other before?</p> <p>17 A. Yes.</p> <p>18 Q. As always if I ask you a question and you need to</p> <p>19 have the question repeated just ask and I'll did that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Agent Tariche, you indicated that Government Exhibits</p> <p>22 5 through 17 are photographs of what you call MS-13</p> <p>23 members; is that correct?</p> <p>24 A. Yes.</p> <p>25 Q. Were these all individuals who were arrested in</p>

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<p style="text-align: right;">Page 118</p> <p>1 connection with the FBI Long Island task force?</p> <p>2 A. Yes.</p> <p>3 Q. And I believe in response to a question by</p> <p>4 Mr. Donoghue, you indicated that you were present when</p> <p>5 some of these pictures were taken?</p> <p>6 A. Yes.</p> <p>7 Q. Would it be more than half or less than half?</p> <p>8 A. More than half.</p> <p>9 Q. Can you tell us which ones you weren't present when</p> <p>10 they were taken?</p> <p>11 A. I was not present for number one.</p> <p>12 Q. I'm sorry?</p> <p>13 A. I'm sorry, number five I was not present for, I was</p> <p>14 not present for number six, I was not present for number</p> <p>15 seven. I was present for the rest.</p> <p>16 Q. So you were present, not present for five, six and</p> <p>17 seven; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. So you can't testify from your own knowledge that</p> <p>20 these accurately depict the individual who was</p> <p>21 photographed at the time the photograph was taken?</p> <p>22 A. Yes, because I have seen them since the photographs</p> <p>23 were taken with the tattoos.</p> <p>24 Q. You've seen these individuals since that time and</p> <p>25 these accurately reflect what you've seen?</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. DONOGHUE: Thank you, your Honor, may I</p> <p>2 proceed.</p> <p>3 THE COURT: Yes.</p> <p>4 Let me see if I can get that a little better.</p> <p>5 That's very good. No one can see anything. We'll have to</p> <p>6 go ahead that way, unless I turn the lights down and then</p> <p>7 put them back up again.</p> <p>8 MR. DONOGHUE: Honestly, your Honor, for us it's</p> <p>9 fine. I know the jurors can probably see the side panels</p> <p>10 very good. I hate to inconvenience the Court because I</p> <p>11 know you don't have a monitor.</p> <p>12 THE COURT: Let's proceed.</p> <p>13</p> <p>14 DIRECT EXAMINATION (Continued.)</p> <p>15 BY MR. DONOGHUE:</p> <p>16 Q. Agent Tariche, can you just tell us briefly what we</p> <p>17 see in that photograph?</p> <p>18 A. Yes, we see a MS-13 member with a tattoo of a 1 and a</p> <p>19 3 on his chin.</p> <p>20 Q. Moving to Government Exhibit number 6, what do we see</p> <p>21 there?</p> <p>22 A. We see on the chest of a MS-13 member the hand sign</p> <p>23 which I have previously shown and we saw also in the</p> <p>24 graffiti in El Salvador.</p> <p>25 Q. Moving to Government Exhibit number 7, what do we see</p>
<p style="text-align: right;">Page 119</p> <p>1 A. Yes.</p> <p>2 Q. When you did you see the individual in exhibit five</p> <p>3 for the first time?</p> <p>4 A. Number five I saw for the first time several years</p> <p>5 ago.</p> <p>6 Q. All the pictures you would have seen for the first</p> <p>7 time after 2004; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And you weren't part of the investigation of</p> <p>10 Mr. Castro at the time that investigation started?</p> <p>11 A. No. It precedes my assignment to the task force.</p> <p>12 Q. And regard to exhibit six, when did you first see</p> <p>13 that individual?</p> <p>14 A. Several years ago.</p> <p>15 Q. If I asked you the same question, would you give the</p> <p>16 same answer for number seven?</p> <p>17 A. Yes.</p> <p>18 Q. So several years ago?</p> <p>19 A. Yes.</p> <p>20 MR. TOMAO: Your Honor, I object to the whole</p> <p>21 group for the reasons we have stated before in our</p> <p>22 pretrial motions.</p> <p>23 THE COURT: That motion -- your objection is</p> <p>24 overruled. Government Exhibits 5 through 17 in evidence.</p> <p>25 (Government Exhibits 5-17 in evidence.)</p>	<p style="text-align: right;">Page 121</p> <p>1 there?</p> <p>2 A. Three dots.</p> <p>3 Q. Is that common among MS-13 members?</p> <p>4 A. Yes, common among MS-13 members.</p> <p>5 Q. Moving on to number 8, what do we see there?</p> <p>6 A. We see the gothic lettering M S across the chest and</p> <p>7 then El Salvador across the belly.</p> <p>8 Q. Moving to Government Exhibit number 8, what do we see</p> <p>9 there?</p> <p>10 A. We see again the same number --</p> <p>11 THE COURT: Is that number 8?</p> <p>12 MR. DONOGHUE: This is I'm sorry, number nine.</p> <p>13 THE COURT: What.</p> <p>14 MR. DONOGHUE: Number nine, your Honor.</p> <p>15 A. Number nine we see spider webs on his elbows and</p> <p>16 again the M S on his chest in gothic lettering.</p> <p>17 Q. It's hard to see on the date screen here, but if you</p> <p>18 look at the photograph itself, can you see within the</p> <p>19 spider webs on the elbows if there's anything there?</p> <p>20 A. Yes, you can see the numeral or the number 1 and the</p> <p>21 number 3 on his elbows.</p> <p>22 Q. Moving to Government Exhibit number 10, what do you</p> <p>23 see there?</p> <p>24 A. We see the block lettering M S on the chest of a</p> <p>25 MS-13 member.</p>

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<p style="text-align: right;">Page 122</p> <p>1 Q. Moving on to Government Exhibit number 11, what do we 2 see there?</p> <p>3 A. We see the block lettering M S and then block numbers 4 1 3 across the inside part of his arms, MS-13's member's 5 arms.</p> <p>6 Q. Moving on to Government Exhibit number 12, what do we 7 see there?</p> <p>8 A. Number 12 we see the MS-13 hand sign, we see the 9 cross, written inside the cross we see the name Maklo, 10 M-A-K-L-O nickname, and then the letters PVLS which is the 11 Parka Vista Locos Salvatruchos. We see some tombstones on 12 either side of the cross, and then alongside there's more 13 tombstones, on both sides.</p> <p>14 Q. Moving on to number 13, what do we see in that 15 exhibit?</p> <p>16 A. 13, across the belly of a MS-13 member block 17 lettering M S, outside the numbers 1 and 3.</p> <p>18 Q. Moving on to Government Exhibit 14, what do we see 19 there?</p> <p>20 A. In this exhibit we see again the MS-13 hand sign, the 21 three dots, gothic lettering M S and then written inside 22 in the M S there is a cross, and a 13 in the center of the 23 M.</p> <p>24 Q. Moving on to number 15, what do we see there?</p> <p>25 A. This is on the belly of a MS-13 member, gothic</p>	<p style="text-align: right;">Page 124</p> <p>1 Q. Just generally, what is it?</p> <p>2 A. These are letters or notes between MS-13 members.</p> <p>3 Q. And the actual substance, the text has been removed. 4 Correct?</p> <p>5 A. Yes.</p> <p>6 Q. What's left behind is essentially doodling or 7 graffiti on the tape, correct?</p> <p>8 A. Yes.</p> <p>9 Q. Is that correspondence that you reviewed?</p> <p>10 A. This is an example of some of the correspondence 11 response that I have reviewed, yes.</p> <p>12 Q. And those are photographs, correct?</p> <p>13 A. These are photographs, correct.</p> <p>14 Q. Aside from the redactions, are those copies, fair and 15 accurate copies of the original letters that you reviewed?</p> <p>16 A. Yes, they are.</p> <p>17 MR. DONOGHUE: Your Honor, at this time we move 18 to admit Government Exhibit number 18.</p> <p>19 THE COURT: Any objection?</p> <p>20 MR. TOMAO: Yes, your Honor.</p> <p>21 I object, and I would ask that we be allowed to 22 approach if I can explain.</p> <p>23 THE COURT: Yes. One minute. 24 (Continued on next page.) 25</p>
<p style="text-align: right;">Page 123</p> <p>1 lettering M S, with a 1 3 in the center of the M.</p> <p>2 Q. Moving on to Government Exhibit 16, what do we see 3 there?</p> <p>4 A. This is the back of a MS-13 member, depicting the 5 hand sign in the center, on the hand sign are the three 6 dots, and the numbers 1 and 3 on his back.</p> <p>7 Q. Finally moving to exhibit number 17, can you tell us 8 what we see there?</p> <p>9 A. This is on the side of the belly of a MS-13 member, 10 depicted is the face of a MS-13 member, Mara Salvatrucha 11 along the top of the face, PVLS across the bridge of the 12 nose, M S written in gothic lettering several times along 13 the face, and in the throat area of the face tattoo.</p> <p>14 Q. Is it fair to say that all of these exhibits were 15 just typical examples of MS-13 tattoo?</p> <p>16 A. Yes.</p> <p>17 Q. And were all of those photographs taken here on Long 18 Island?</p> <p>19 A. Yes, they were.</p> <p>20 Q. All right, sir.</p> <p>21 I'm going to approach and put in front of you 22 what's marked for identification as Government Exhibit 23 number 18, ask that you take a look at that. (Handing.)</p> <p>24 Sir, do you recognize what's in that exhibit?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 125</p> <p>1 (Whereupon, the following occurred at sidebar.)</p> <p>2 MR. TOMAO: Your Honor, one of those pages we're 3 getting past just background, historical information. 4 That's this page here which I've shown the prosecutor. 5 This one already -- it begins to put Freeport, which is 6 the issue here as to whether or not his group was part of 7 this broader conspiracy.</p> <p>8 The other matters are all, all don't have 9 reference to Freeport the prosecutor has given me a 10 proffer indicating he's not going to be eliciting anything 11 on the other pages.</p> <p>12 So my objection would be to the page that has 13 the reference to Freeport in the lower right-hand corner 14 as being really beyond expert testimony now. What we 15 would need to find out where this came from and develop 16 whether or not this should be properly before the jury to 17 find the issues here in this case as to whether this 18 fellow is a member of this particular organization.</p> <p>19 MR. DONOGHUE: Your Honor, if it makes it 20 easier, we'll just remove the last page.</p> <p>21 MR. TOMAO: On that basis, then my objection is 22 the only one that I made before, the motion, which I 23 repeat.</p> <p>24 THE COURT: Overruled. 25 MR. TOMAO: Thank you.</p>

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<p style="text-align: right;">Page 126</p> <p>1 (Whereupon, the following occurred in open 2 court.) 3 THE COURT: Government Exhibit 18 as, with one 4 page redacted, correct. 5 MR. DONOGHUE: I have just removed one page from 6 the exhibit that's before the witness, you are, the very 7 last page. 8 THE COURT: Very well. 9 MR. DONOGHUE: Otherwise in evidence, 10 your Honor? 11 THE COURT: Yes. 12 MR. DONOGHUE: Thank you. 13 (Government Exhibit 18 in evidence.) 14 BY MR. DONOGHUE: 15 Q. Agent Tariche, I'm going to put up the first page of 16 Government Exhibit number 18 on the screen. Could you 17 just explain to us what we see there? 18 A. Yes, we see written across the top in gothic 19 lettering Mara Salvatrucha, in the top right-hand corner 20 we see Shortie, PLS with the three dots. In the center of 21 the page we see MS-13 hand sign with the 1 and a 3 on the 22 fingers. And then we see Por, the letters Por, P-O-R 23 Vida, V-I-D-A. And then below that Mara Salvatrucha, 24 Westbury Locotes above Mara Salvatrucha. 25 Q. Moving down to the second page, can you tell us what</p>	<p style="text-align: right;">Page 128</p> <p>1 and ask that you look at that. (Handing.) 2 It's a photograph, correct? 3 A. Yes. 4 Q. Do you recognize what's depicted in that photograph? 5 A. Yes, I do. 6 Q. What is depicted there? 7 A. This is a handkerchief with MS-13 writing on it. 8 Q. Does the photograph fairly than an accurately depict 9 the handkerchief itself? 10 A. Yes. 11 Q. You've seen the handkerchief itself? 12 A. Yes. 13 Q. So the photograph accurately depicts it? 14 A. Yes. 15 MR. DONOGHUE: Your Honor, the government moves 16 to admit Government Exhibit 19. 17 THE COURT: Any objection? 18 MR. TOMAO: For the reasons stated previously on 19 the motions. 20 THE COURT: That motion is denied. In evidence. 21 (Government Exhibit 19 in evidence.) 22 Q. I'll put it up on the screen so that you can see 23 it. Could you just explain to us what we see depicted in 24 the color handkerchief? 25 A. Yes. Along the top on the outside you have the M S</p>
<p style="text-align: right;">Page 127</p> <p>1 we see there? 2 A. We see in the top left corner HLS and we see the hand 3 sign, one of the hand signs of the MS-13 on the left-hand 4 side of the page, we see LA gangster in the middle, and 5 then another MS-13 hand sign depicting the S on the 6 right-hand side of the page, with the letters RLS above 7 it. 8 Then a number 1 and the number 3 is partially 9 blocked out in the bottom right corner. 10 Q. Moving down to the next page, can you tell us what we 11 see there? 12 A. Next page along the top you can see the MS-13 hand 13 sign, with a 1 and a 3 in the two center fingers. Another 14 MS-13 hand signs for the S next to it, then HLS with the 15 three dots in the center, MS-13 hand signs, indicating 1 16 and 3 with PLS in between it and then the three dots. 17 Q. Turning to the next page, what do we see there? 18 A. In gothic lettering La Mara Salvatrucha. 19 Q. Turning to the next page, what do we see there? 20 A. We see in the block lettering M S with the numbers 21 1 3 above it, and then in the end we see RIP, rest in 22 peace, El Matito, and RIP, rest in peace, El Tiro Loco, 23 T-I-R-O L-O-C-O. 24 Q. And I'm going to approach and put before you what's 25 marked as Government Exhibit number 19 for identification</p>	<p style="text-align: right;">Page 129</p> <p>1 in gothic lettering. In between it states La Mara 2 Salvatrucha, the letters or the numbers one three, then 3 going down the handkerchief Somos, S-O-M-O-S Pelones, 4 P-E-L-O-N-E-S Locotes L-O-C-O-T-E-S, Por P-O-R Vida 5 V-I-D-A. 6 Q. What does that mean? 7 A. That means we are crazy Pelones for life La Mara 8 Salvatrucha. 9 Q. Pelones is one of the cliques or chapters? 10 A. One of the cliques or chapters, yes. 11 Q. And what color is used in that handkerchief? 12 A. Colors of the numbers and letters bluish the 13 handkerchief is white. 14 Q. Is that a somewhat common piece of MS-13 15 paraphernalia? 16 A. Yes. 17 Q. Like the color handkerchief? 18 A. Yes. 19 Q. I'm going to put before you a disk which is marked 20 for identification as Government Exhibit number 20. Sir, 21 do you recognize that disk? (Handing.) 22 A. Yes, I do. 23 Q. And there's a video clip on that disk; is that 24 correct? 25 A. Yes.</p>

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<p style="text-align: right;">Page 130</p> <p>1 Q. It's an edited version of a longer recording. 2 Correct? 3 A. Yes. 4 Q. Have you reviewed both the longer recording and the 5 edited version? 6 A. Yes, I have. 7 Q. And does the file accurately reflect the recording 8 that you reviewed? 9 A. Yes. 10 MR. DONOGHUE: Your Honor, at this time we move 11 to admit Government Exhibit number 20. 12 MR. TOMAO: I object, your Honor. May we 13 approach? 14 THE COURT: Very well. 15 (Continued on next page.) 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 132</p> <p>1 MR. TOMAO: It takes about an hour. 2 MR. DONOGHUE: It's over an hour. 3 THE COURT: You can object and in your case you 4 can put it in, but I'm going to let the government put in 5 the part they want to. If you want to play the whole 6 thing, you can. 7 MR. DONOGHUE: We have a disk with the entire 8 recording, your Honor, if the defense wants it. 9 THE COURT: Why don't you offer the disk with 10 the entire thing and play just this part. 11 MR. DONOGHUE: Can we do both, your Honor. 12 MR. TOMAO: I have no objection -- let him play 13 this portion, I'll mark the entire disk as a defense 14 exhibit and play it during cross-examination. 15 THE COURT: Good. 16 MR. DONOGHUE: Thank you. 17 (Continued on next page.) 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 131</p> <p>1 (Whereupon, the following occurred at sidebar.) 2 MR. TOMAO: Your Honor, I'm going to object to 3 this. There's been no foundation laid to this. This is 4 the video of the wake. 5 I understand they have a witness coming in later 6 would may be able to testify regarding, this is coming in 7 for substantive evidence not just for this witness' 8 expertise and I would object to it on that basis. 9 MR. DONOGHUE: Your Honor, we are offering it 10 subject to connection. We will have a witness later on 11 who can testify that they were present when the recording 12 was made. 13 We did call Agent Tariche somewhat out of order 14 in part to address the defense concerns about his 15 sequestration. So I would ask that we be permitted to 16 play it now. 17 THE COURT: I'm going to take it subject to 18 connection. I'll tell that to the jury. 19 MR. TOMAO: Your Honor, I also have advised the 20 government that I would request that the entire recording 21 be played, we request that it be done at this time, so 22 that the jury can see it, the excerpt in context. 23 Having reviewed it all since the hearing I now 24 feel that it's important to have the entire -- 25 THE COURT: How long is it?</p>	<p style="text-align: right;">Page 133</p> <p>1 (Whereupon, the following occurred in open 2 court.) 3 MR. DONOGHUE: Your Honor, pursuant to the 4 discussion we just had at sidebar, the government moves to 5 admit what's been marked for identification as 6 Government's Exhibit 20 in evidence. 7 MR. TOMAO: Your Honor, I object pursuant to the 8 reasons stated at sidebar. 9 THE COURT: Overruled. As I told you, you can 10 in your case offer the entire video clip in evidence. 11 MR. TOMAO: Thank you, your Honor. 12 THE COURT: We're just going to see the part of 13 it that the government offered now. Government Exhibit 20 14 in evidence. 15 (Government Exhibit 20 in evidence.) 16 MR. DONOGHUE: Your Honor, I'm going to play the 17 video. It runs approximately eight minutes. 18 May we have the witness step down from the 19 witness stand so he can narrate a little bit better what 20 we're seeing. 21 THE COURT: Yes. 22 Q. Agent Tariche, this video is going to come up on the 23 monitor as well as the large screen. I would just ask 24 that as we go through, you describe to us what we see 25 here?</p>

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<p style="text-align: right;">Page 134</p> <p>1 (Videotape played.)</p> <p>2 A. This is a wake of a MS-13 member in a Hempstead</p> <p>3 funeral home, and you can see individuals placing blue</p> <p>4 bandanas onto his -- into the coffin, and groups --</p> <p>5 chapters or cliques, coming up together showing their hand</p> <p>6 signs, the MS-13 hand sign to the corpse; kneeling down,</p> <p>7 many of them with their hands up in the MS-13 hand sign.</p> <p>8 You can see that some have just one hand up but</p> <p>9 several have both of their hands up, again that MS-13 hand</p> <p>10 sign.</p> <p>11 In the coffin you can see the blue bandanas on</p> <p>12 top of the corpse.</p> <p>13 Also, in the crowd you can see members wearing</p> <p>14 the blue bandanas and their hand signs up.</p> <p>15 Q. If you know, was this taken prior to 2003?</p> <p>16 A. Yes. This was taken in 2001.</p> <p>17 In this particular chapter or clique are members</p> <p>18 of the Hempstead clique of the MS-13. Camera's panning</p> <p>19 around the funeral home. Again you can see some wearing</p> <p>20 the blue bandanas and some with their hand signs up,</p> <p>21 kneeling at the coffin.</p> <p>22 Now we pass forward through the video to another</p> <p>23 clique or chapter coming up.</p> <p>24 This particular group is --</p> <p>25 MR. TOMAO: Objection, your Honor, to</p>	<p style="text-align: right;">Page 136</p> <p>1 THE COURT: I'll overrule that objection.</p> <p>2 (Video played.)</p> <p>3 BY MR. DONOGHUE (Cont'd):</p> <p>4 Q. The gentleman in the center there with the white</p> <p>5 cut-off T-shirt, can you see what's around his neck?</p> <p>6 A. Yes.</p> <p>7 Around his neck are blue and white beads, which</p> <p>8 is also a sign, or paraphernalia used by MS-13 members.</p> <p>9 Q. I know it's very quick, but at the end of this clip,</p> <p>10 are we able to see what he does with them?</p> <p>11 A. Yes.</p> <p>12 Quickly he will place them into the coffin with</p> <p>13 the blue bandanas.</p> <p>14 That group leaves and another group comes up</p> <p>15 kneeling at the coffin, and certain members showing the</p> <p>16 MS-13 hand sign to the coffin, both directly in front of</p> <p>17 the coffin and in the second row you can see members</p> <p>18 showing the hand sign of the MS-13.</p> <p>19 Others placing, I believe, bandanas into the</p> <p>20 coffin as they walk by the coffin.</p> <p>21 Q. Are the bandanas blue?</p> <p>22 A. The bandanas are blue, yes.</p> <p>23 MS-13 members throwing the hand sign and the</p> <p>24 sign of the cross to the corpse as they go by. More</p> <p>25 members doing the sign of the cross, as well as the MS-13</p>
<p style="text-align: right;">Page 135</p> <p>1 describing, identifying these groups.</p> <p>2 THE COURT: Pardon?</p> <p>3 MR. TOMAO: I object to his identifying which</p> <p>4 groups these are.</p> <p>5 That's outside his expertise.</p> <p>6 THE COURT: How do you know which groups they</p> <p>7 are?</p> <p>8 THE WITNESS: I recognize this member being from</p> <p>9 the BLS, the Brentwood Locos Salvatruchos, and I recognize</p> <p>10 several members from the Hempstead group in the first</p> <p>11 group, that group has moved away and a new group has come</p> <p>12 up, some depicting the hand signs.</p> <p>13 THE COURT: It's the same wake?</p> <p>14 THE WITNESS: It's the same wake, yes. We just</p> <p>15 fast forwarded the video to another group approaching the</p> <p>16 coffin.</p> <p>17 THE COURT: I see. I'll overrule that</p> <p>18 objection.</p> <p>19 (Continued on next page.)</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 137</p> <p>1 gang signs.</p> <p>2 More members throwing hand signs at the corpse</p> <p>3 and placing bandanas into the casket.</p> <p>4 Q. What do we see at this point?</p> <p>5 A. This is now outside of the funeral home in Hempstead.</p> <p>6 Members of the MS-13 throwing signs to the</p> <p>7 person taking the video. MS-13 signs to the video camera</p> <p>8 outside of the funeral home.</p> <p>9 Q. What are they doing with their hands?</p> <p>10 A. They are spelling out different letters, the cliques,</p> <p>11 HLS.</p> <p>12 Q. And that ends the video.</p> <p>13 Correct?</p> <p>14 A. Yes.</p> <p>15 (Video stopped.)</p> <p>16 Q. And, Agent Tariche, if you would return to the</p> <p>17 witness stand.</p> <p>18 (Witness resumes the stand.)</p> <p>19 MR. DONOGHUE: Your Honor, I have no further</p> <p>20 questions.</p> <p>21 THE COURT: Cross-examination?</p> <p>22 MR. TOMAO: Thank you, your Honor.</p> <p>23 THE COURT: I think we'll take a recess before</p> <p>24 cross.</p> <p>25 Members of the jury, we are going to take a</p>

Exhibit I

E. Valentin-Direct/Donoghue

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1 to make it darker.
 2 **A Well, I see the deli there.**
 3 **Q** Sir, would you please look at the large screen behind
 you, and I will use this laser to indicate.
 5 These buildings right here on the right edge of
 6 the photograph, could you tell me what that is?
 7 **A I see it, I see where you are.**
 8 **Q** Is that the deli?
 9 **A Yes.**
 10 **Q** And this street here that runs diagonally across the
 11 photograph, what street is that?
 12 **A That's Lowell Avenue.**
 13 **Q** Okay.
 14 And I think earlier you indicated that this area
 15 up here, the top left, is --
 16 **A That's the train.**
 17 **Q** The train station?
 18 **A Yes.**
 19 **Q** Okay.
 20 Thank you, sir.

21 **MR. DONOGHUE:** That's the last photograph we
 22 will have with this witness, your Honor.
 23 **Q** Sir, after your son Jesus left for the deli on
 24 June 30th, 2003, did you ever see him again?
 25 **A No.**

E. Valentin-Cross/LaPinta

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1 **Q** When he didn't come home, what did you do?
 2 **A I got very concerned. And I went to the police the**
 3 **next day and I brought a picture with me.**
 4 **Q** Why did you go to the police the next day?
 5 **A Because my son was missing.**
 6 **MR. DONOGHUE:** Thank you.
 7 Your Honor, I have no further questions.
 8 **THE COURT:** Cross-examination.
 9 **MR. LA PINTA:** Yes.
 10
 11 **CROSS-EXAMINATION**
 12 **BY MR. LA PINTA:**
 13 **Q** Good morning, Mr. Valentin.
 14 **A Good day.**
 15 **Q** Let me show you what has been marked as
 16 Defendant's Exhibit A, and ask that you take a look.
 17 **MR. LA PINTA:** May I approach?
 18 **THE COURT:** Sure.
 19 For identification?
 20 **MR. LA PINTA:** Yes, sir.
 (Handed to the witness.)
 22 **Q** You recognize that photograph, don't you?
 23 **A It looks like Jesus.**
 24 **Q** Is that a fair and accurate depiction of your son
 25 Jesus from June of 2003?

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1 **A No.**
 2 **Q** No?
 3 Is that a fair and accurate depiction of Jesus
 4 from 2003 in general?
 5 **A No.**
 6 **Q** No?
 7 Is that not a photograph of your son Jesus
 8 Valentin?
 9 **A This is Jesus.**
 10 **Q** Is it fair to say that this is how Jesus generally
 11 looked in 2003?
 12 **A Well, he always looked the same.**
 13 **Q** Okay.
 14 So you would agree that that is how he looked in
 15 2003, yes?
 16 **A Yes, yes.**
 17 **MR. LA PINTA:** Thank you.
 18 I offer that in evidence at this time.
 19 **MR. DONOGHUE:** I have seen it, your Honor. We
 20 have no objection.

21 **THE COURT:** Defendant's Exhibit A, for Abel, in
 22 evidence.
 23 (Whereupon, Defendant's Exhibit A was received
 24 in evidence.)
 25 **MR. LA PINTA:** I would like to publish it,

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1 please, Judge?
 2 **THE COURT:** Yes.
 3 (At this time a document was exhibited on
 4 courtroom screen.)
 5 **MR. LA PINTA:** I have nothing further. Thank
 6 you.
 7 **THE COURT:** Anything else?
 8 **MR. DONOGHUE:** No.
 9 (Whereupon, the witness leaves the witness
 10 stand.)
 11 **THE COURT:** Please call your next witness.
 12 **MR. DONOGHUE:** Your Honor, the government calls
 13 Special Agent Reynaldo Tariche.
 14 **THE COURT:** Raise your right hand.
 15
 16 **REYNALDO TARICHE,**
 17 called as a witness, having been first
 18 duly sworn, was examined and testified
 19 as follows:
 20 **THE COURT:** Please be seated.
 21 Please state your full name and spell your name
 22 slowly for the record.
 23 **THE WITNESS:** My name is Reynaldo Tariche. It
 24 is R-E-Y-N-A-L-D-O, Tariche, T-A-R-I-C-H-E.
 25 **THE COURT:** You may proceed.

<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">329</p> <p>1 I am going to give a limiting instruction, but</p> <p>2 you can start your questioning.</p> <p>3 MR. DONOGHUE: Yes, sir.</p> <p>4</p> <p>5 DIRECT EXAMINATION</p> <p>6 BY MR. DONOGHUE:</p> <p>7 Q Sir, can you tell us how you are currently employed?</p> <p>8 A I am a Special Agent of the Federal Bureau of</p> <p>9 Investigation.</p> <p>10 Q And approximately how long have you been an FBI</p> <p>11 Special Agent?</p> <p>12 A Approximately 19 years.</p> <p>13 Q Prior to joining the FBI, how were you employed?</p> <p>14 A I had a job at a brokerage firm in downtown</p> <p>15 Manhattan.</p> <p>16 Q Would you just briefly tell us what your formal</p> <p>17 education is?</p> <p>18 A I have a finance degree from Boston College.</p> <p>19 Q Would you just generally describe what kind of</p> <p>20 training you received over your 19 years as an FBI agent?</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">331</p> <p>1 A Yes, I was.</p> <p>2 Q And what force, task force was that?</p> <p>3 A The violent crime task force.</p> <p>4 Q Approximately how long did you serve on that task</p> <p>5 force?</p> <p>6 A I served there for five years, between 1990 and 1995.</p> <p>7 Q And what agencies provided personnel for that task</p> <p>8 force?</p> <p>9 A It was comprised of the FBI, Los Angeles County</p> <p>10 Sheriff's Office, the Long Beach, California Police</p> <p>11 Department, as well as the Bureau of Narcotics</p> <p>12 Enforcement, State of California investigators.</p> <p>13 Q And what was the mission of that task force?</p> <p>14 A The mission of the task force was to combat and</p> <p>15 investigate violent crimes in violation of the federal</p> <p>16 law.</p> <p>17 Q What type of cases did you work with?</p> <p>18 A We worked gang investigations, bank robberies,</p> <p>19 kidnappings, extortions, as well as other violent crimes.</p> <p>20 Q And just approximately, how many cases did you work</p>
<p>21 A Yes. I attended the 16-week training academy of the</p> <p>22 FBI in Quantico, Virginia.</p> <p>23 In addition to that, I have gone to many</p> <p>24 continuing education courses at Quantico and other</p> <p>25 training facilities to include sophisticated</p>	<p>21 while you were out in California?</p> <p>22 A In the hundreds.</p> <p>23 Q Generally what did you do in the course of those</p> <p>24 investigations?</p> <p>25 A In the course of my investigations, I conducted</p>
<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">330</p> <p>1 investigations, seminars, and special weapons and tactics</p> <p>2 training.</p> <p>3 Q Have you attended any courses specifically related to</p> <p>4 street gang investigation?</p> <p>5 A Yes. I have attended the FBI state street task force</p> <p>6 training at Quantico, Virginia.</p> <p>7 Q Would you briefly describe the different assignments</p> <p>8 you had as an FBI special agent?</p> <p>9 A Yes.</p> <p>10 As a new agent I was assigned in 1990 to Long</p> <p>11 Beach, California, resident agency, which is a satellite</p> <p>12 office of the Los Angeles division of the FBI. I was</p> <p>13 there from 1990 to 1995 as part of the violent crimes task</p> <p>14 force.</p> <p>15 Q What was your following assignment?</p> <p>16 A My following assignment was from 1995 to 2004, I was</p> <p>17 assigned to the Brooklyn Queens resident agency or</p> <p>18 satellite office of the New York office of the FBI,</p> <p>19 working drug and money laundering investigations.</p> <p>20 Q And where were you assigned in 2004?</p> <p>21 A In 2004 I was assigned to the Long Island resident</p> <p>22 agency on the Long Island gang task force from 2004 to the</p> <p>23 present.</p> <p>24 Q While you were stationed in Long Beach, California,</p> <p>25 were you assigned to a task force?</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">332</p> <p>1 surveillances, I developed informants, conducted arrests,</p> <p>2 search warrants, and assisted the United States Attorney's</p> <p>3 Office in prosecuting the cases.</p> <p>4 Q You said you are currently assigned to the Long</p> <p>5 Island gang task force?</p> <p>6 A Yes, that's correct.</p> <p>7 Q And what law enforcement agencies have personnel now</p> <p>8 assigned to that task force?</p> <p>9 A The Long Island gang task force comprised of the FBI,</p> <p>10 the New York State Police, Nassau County Police</p> <p>11 Department, Nassau County Sheriff's Department, Hempstead</p> <p>12 Police Department and most recently the Suffolk County</p> <p>13 Police Department.</p> <p>14 Q Had you been assigned to that since 2004?</p> <p>15 A Yes, I have.</p> <p>16 Q And just generally what is the mission of the Long</p> <p>17 Island gang task force?</p> <p>18 A The mission of the Long Island gang task force --</p> <p>19 THE COURT: You have to slow down a little,</p> <p>20 agent, slow it down.</p> <p>21 THE WITNESS: Yes, your Honor.</p> <p>22 THE COURT: Okay.</p> <p>23 A It is to combat violent gangs here on Long Island and</p> <p>24 to assist the United States Attorney's Office in</p> <p>25 prosecuting the gangs.</p>

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1 Q From your work in the task force, do you know what
2 gangs we have here on Long Island?

3 A Yes. We have here on Long Island the MS-13, we have
4 the Latin Kings. We have Netas, spelled N-E-T-A-S. We
5 have 18th Street. We have motorcycle gangs as well as
6 others.

7 THE COURT: I think at this point I want to
8 instruct the jury about this witness.

9 Members of the jury, I am going to permit this
10 witness to testify as what we call an expert witness.

11 An expert is a witness allowed to express
12 opinion on matters about which he has special knowledge
13 and training, and in this particular case with regard to
14 gangs.

15 Expert testimony is presented to you on the
16 theory that someone who is experienced in a particular
17 field may assist you in understanding the evidence and
18 reaching an independent decision on the facts.

19 In weighing this witness' testimony, you may
20 consider his qualifications, the opinions given and his

21 reason for testifying, as well as all of the other
22 considerations that you ordinarily apply when deciding
23 whether or not to believe a witness' testimony.

24 You may give the opinions given by this witness
25 whatever weight, if any, you find it deserves in light of

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1 all the evidence in the case. You should not, however,
2 accept such an expert witness' testimony merely because he
3 is an expert in the field. Nor should you substitute it
4 for your own reason, judgment and common sense.

5 So the determination of the facts in this case
6 rests solely with you, including this expert witness'
7 testimony.

8 You may proceed.

9 MR. DONOGHUE: Thank you, your Honor.

10 Q Agent Tariche, from your work on the task force, do
11 you know what the largest street gang is on Long Island?

12 A Yes. The largest street gang is the MS-13.

13 Q And what does MS-13 stand for?

14 A It stands for Mara Salvatrucha, spelled M-A-R-A,
15 S-A-L-V-A-T-R-U-C-H-A.

16 Q And those are Spanish slang words?

17 A Yes.

18 Q And just generally, what would the translation of
19 Mara Salvatrucha be?

20 A The general translation of Mara indicates gangs,
21 Salvatrucha is from El Salvador, gang from El Salvador,
22 generally.

23 Q Do you and other members of the task force work many
24 cases related to the MS-13?

25 A Yes.

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1 Q Approximately how many cases you work are related to
2 the MS-13?

3 A Almost all the cases I work are MS-13 related.

4 Q What types of activities have you undertaken to gain
5 an understanding of the MS-13 street gang?

6 A I have worked specific MS-13 investigations myself.
7 I have conducted physical and audio surveillance of MS-13
8 members at their meetings. I have also listened to hours
9 of audio recordings of MS-13 members and their meetings.
10 Also viewed video surveillance of their meetings. And I
11 have conducted arrests of MS-13 members and their
12 associates; search warrants of MS-13 locations and their
13 associates. I have translated and read many letters and
14 correspondence between MS-13 members and their associates.
15 I have coordinated investigations with other law
16 enforcement entities, both nationally and internationally,
17 with regard to MS-13. And I have conducted interviews of
18 MS-13 members, current members and former members, as well
19 as their associates.

20 Q Approximately how many MS-13 members have you
21 arrested?

22 A Approximately 20.

23 Q And approximately how many members or associates have
24 you interviewed?

25 A Approximately 40.

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1 Q While you were stationed here in New York, have you
2 ever worked with law enforcement officers from other
3 jurisdictions on MS-13 members?

4 A Yes, I have.

5 I worked with law enforcement officers from
6 other jurisdictions to include California, Virginia, the
7 Carolinas, Texas and internationally, El Salvador.

8 Q And aside from your case-based law enforcement
9 activities, have you done anything else to educate
10 yourself about the MS-13?

11 A Yes.

12 I have attended conferences, both in the United
13 States and internationally.

14 Q Where have you attended conferences outside the
15 United States?

16 A Outside the United States, I traveled to El Salvador
17 on four occasions. Three times to attend trans-national
18 gang conferences.

19 Q And just generally, what did you do on those four
20 trips to El Salvador?

21 A Generally on the trips, the first three times -- the
22 first two times, I guess, were these trans-national gang
23 conferences, bringing in officers, government officials
24 and others from all over Central America and the United
25 States, that's on three occasions. Once I went down there

<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">337</p> <p>1 to actively work with the PNC, which stands for the</p> <p>2 Policia Nacional Civil, or the national police force of El</p> <p>3 Salvador.</p> <p>4 Q And while you were down there with the PNC, what did</p> <p>5 you do in relation to the MS-13?</p> <p>6 A While I was with PNC, we went to the neighborhoods</p> <p>7 where the MS-13 gang operates. I observed graffiti. I</p> <p>8 observed MS-13 members there. I also went to a maximum</p> <p>9 security prison that is called Zacatuculoca, spelled</p> <p>10 Z-A-C-A-T-A-C-U-L-O-C-A, where MS-13 members and other</p> <p>11 gang members are housed, and I conducted -- helped to</p> <p>12 conduct some interviews of MS-13 members there.</p> <p>13 I also exchanged intelligence and case</p> <p>14 information with the PNC.</p> <p>15 THE COURT: We are going to take a break at this</p> <p>16 time.</p> <p>17 MR. DONOGHUE: Yes.</p> <p>18 THE COURT: Members of the jury, we will take a</p> <p>19 recess for lunch.</p> <p>20 I tell you again not to discuss this case either</p> <p>21 among yourselves or with anyone else.</p> <p>22 Keep an open mind. Come to no conclusion until</p> <p>23 the very end of the case. You will hear me say that a</p> <p>24 number of times every day because it is that important.</p> <p>25 Keep an open mind.</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">339</p> <p>1 AFTERNOON SESSION</p> <p>2</p> <p>3</p> <p>4 (Whereupon, the jury at this time entered the</p> <p>5 courtroom.)</p> <p>6 REYNALDO TARICHE,</p> <p>7 called as a witness, having been previously</p> <p>8 duly sworn, was examined and testified as</p> <p>9 follows:</p> <p>10</p> <p>11 THE COURT: Please be seated, members of the</p> <p>12 jury.</p> <p>13 You may proceed, Mr. Donoghue.</p> <p>14 MR. DONOGHUE: Thank you, your Honor.</p> <p>15</p> <p>16 DIRECT EXAMINATION (cont'd)</p> <p>17 BY MR. DONOGHUE:</p> <p>18 Q Agent Tariche, when we left off this morning, you</p> <p>19 were talking about some of the things you had done down in</p> <p>20 El Salvador with the national police there, and you talked</p> <p>21 about conferences.</p> <p>22 Aside from conferences in El Salvador, have you</p> <p>23 attended any conferences here in the United States</p> <p>24 relating to gang investigations?</p> <p>25 A Yes, I have.</p>
<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">338</p> <p>1 We will recess until 1:40 p.m.</p> <p>2 Have a nice lunch.</p> <p>3 Please recess yourselves.</p> <p>4 (Whereupon, at this time the jury leaves the</p> <p>5 courtroom.)</p> <p>6 THE COURT: 1:40.</p> <p>7 (Luncheon Recess.)</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">340</p> <p>1 Q Approximately how many?</p> <p>2 A Approximately five times.</p> <p>3 Q And have you ever served as an a instructor at such</p> <p>4 conferences?</p> <p>5 A Yes, I have.</p> <p>6 Q And just generally, what types of instruction have</p> <p>7 you provided?</p> <p>8 A I have provided case instruction on active</p> <p>9 investigations I have done in previous investigations.</p> <p>10 Q Aside from your work and experience on the two task</p> <p>11 forces that you were on, and the additional training</p> <p>12 seminars you attended, what else have you done to educate</p> <p>13 yourself about the MS-13?</p> <p>14 A I read journal articles, books, and viewed</p> <p>15 documentaries.</p> <p>16 Q You indicated earlier that you listened to many live</p> <p>17 and recorded conversations between MS-13 members; is that</p> <p>18 correct?</p> <p>19 A Yes.</p> <p>20 Q And what language do they usually use?</p> <p>21 A They usually use Spanish.</p> <p>22 Q Can you speak Spanish?</p> <p>23 A Yes, I can.</p> <p>24 Q Can you read it and write it as well?</p> <p>25 A Yes.</p>

<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">341</p> <p>1 Q And how did you first learn Spanish?</p> <p>2 A I grew up in a bilingual home.</p> <p>3 Q What is your ethnic background, sir?</p> <p>A My parents are immigrants from Cuba.</p> <p>5 Q Due to the work and experience you described, have</p> <p>6 you been able to formulate any opinions regarding the</p> <p>7 MS-13 street gang?</p> <p>8 A Yes, I have.</p> <p>9 Q And have you been able to formulate an opinion</p> <p>10 regarding where the gang originated?</p> <p>11 A Yes. In my opinion the gang originated in Los</p> <p>12 Angeles, California.</p> <p>13 Q And have you been able to formulate an opinion</p> <p>14 regarding where the gang currently has a presence?</p> <p>15 A Yes.</p> <p>16 Q And what is your opinion?</p> <p>17 A My opinion is the gang spread from Los Angeles</p> <p>18 through the United States to different regions, including</p> <p>19 Texas, the Virginias, the Carolinas, New York, as well as</p> <p>20 throughout Central America, and Mexico as well.</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">343</p> <p>1 of streets in Los Angeles.</p> <p>2 For example, the Normandys would be an example,</p> <p>3 using a Los Angeles name to cover their clique.</p> <p>4 Q You used some abbreviations there. Is it common for</p> <p>5 different cliques to have abbreviated their names the way</p> <p>6 you described, HLS being Hempstead, and BLS being</p> <p>7 Brentwood?</p> <p>8 A Yes, it is common to use that practice.</p> <p>9 Q Have you been able to formulate an opinion regarding</p> <p>10 whether the gang holds any type of meetings?</p> <p>11 A Yes, I have.</p> <p>12 Q What is your opinion?</p> <p>13 A The gang holds meetings both within their cliques,</p> <p>14 which is a small meeting, or they would hold also a</p> <p>15 universal meeting in which various clique leaders would</p> <p>16 come together to discuss gang business.</p> <p>17 Another term they use is Misa, which is M-I-S-A,</p> <p>18 which is Spanish for mass.</p> <p>19 THE COURT: Spanish for what?</p> <p>20 THE WITNESS: Mass, M-A-S-S. Like a church</p>
<p>21 Q And have you been able to formulate an opinion</p> <p>22 regarding who the members of MS-13 generally are?</p> <p>23 A Yes, I have.</p> <p>24 Q What is your opinion on that?</p> <p>25 A My opinion is they are predominantly from El Salvador</p>	<p>21 mass.</p> <p>22 Q Have you been able to formulate an opinion regarding</p> <p>23 whether MS-13 members use any symbols to demonstrate their</p> <p>24 membership?</p> <p>25 A Yes, I have.</p>
<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">342</p> <p>1 and Honduras.</p> <p>2 Q Have you been able to formulate an opinion regarding</p> <p>3 how the gang is organized?</p> <p>4 A Yes, I have.</p> <p>5 Q And what is your opinion on that?</p> <p>6 A My opinion is the gang is organized into groups, also</p> <p>7 known as cliques, throughout the United States and</p> <p>8 internationally.</p> <p>9 Q That's C-L-I-Q-U-E-S?</p> <p>10 A Yes.</p> <p>11 Q And is that how the members identify themselves?</p> <p>12 A Yes, by their cliques.</p> <p>13 Q And do the cliques use different names and titles to</p> <p>14 differentiate themselves?</p> <p>15 A Yes, they do, yes.</p> <p>16 Q And how do they do that?</p> <p>17 A They can do it a couple of different ways.</p> <p>18 For example, here on Long Island they will be</p> <p>19 from a particular area, for example, Hempstead would be</p> <p>20 known as the Hempstead clique. Locos Salvatruchas,</p> <p>L-O-C-O-S, S-A-L-V-A-T-R-U-C-H-A-S. That would be an</p> <p>22 example of a local clique on Long Island, for example.</p> <p>23 The other one would be the Brentwood Locos Salvatruchas,</p> <p>24 or BLS.</p> <p>25 In addition, they sometimes have taken the names</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">344</p> <p>1 Q And what symbols do they use?</p> <p>2 A The MS-13 members use hand signs to signify their</p> <p>3 membership, is one way. They also use specific colors,</p> <p>4 which are blue and white. Additionally they use</p> <p>5 tattooing, MS-13, the letters, and other symbols and</p> <p>6 Gothic lettering sometimes. And they also use graffiti to</p> <p>7 mark their particular neighborhoods.</p> <p>8 Q I will approach and hand you what is marked as</p> <p>9 Government's Exhibit 3, 3-A, 3-B, and 3-C for</p> <p>10 identification, and ask you to take a look at those.</p> <p>11 (Handed to the witness.)</p> <p>12 Q Do you recognize the photographs?</p> <p>13 A Yes.</p> <p>14 Q What is depicted in the photographs?</p> <p>15 A Various different MS-13 -- an example of MS-13</p> <p>16 graffiti.</p> <p>17 Q Do you know who took those photographs?</p> <p>18 A Yes, I took them or I was present when they were</p> <p>19 taken in all four occasions.</p> <p>20 Q Okay.</p> <p>21 Generally where were those photographs taken?</p> <p>22 A Exhibit 3 was taken in Hempstead.</p> <p>23 Exhibit 3-A, 3-B and 3-C were taken at a maximum</p> <p>24 security prison in El Salvador.</p> <p>25 Q And just generally what is depicted in those four</p>

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1 photographs?

2 **A** Generally you can see the MS-13 -- some of their
 3 symbols, you have the S and the 13 obviously and --

4 **Q** Are they just graffiti?

5 **A** Yes.

6 **Q** And do the photographs fairly and accurately reflect
 7 the graffiti that you saw at those locations when the
 8 pictures were taken?

9 **A** Yes.

10 MR. DONOGHUE: At this time, your Honor, the
 11 government moves to admit Government's Exhibit 3, 3-A, 3-B
 12 and 3-C.

13 THE COURT: Any objection?

14 MR. LA PINTA: No.

15 THE COURT: Government's Exhibit 3, 3-A, 3-B,
 16 3-C, in evidence.

17 (Whereupon, Government's Exhibits 3, 3-A, 3-B
 18 and 3-C were received in evidence.)

19 MR. DONOGHUE: Thank you.

20 THE COURT: Now, I just wonder, instead of me

21 having to dim those lights, are these side-views, do they
 22 show well? Let me take a look.

23 MR. DONOGHUE: They look much better actually
 24 than the overhead, your Honor.

25 THE COURT: All right.

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1 What did you just put up?

2 MR. DONOGHUE: Government's Exhibit 3, your
 3 Honor.

4 (At this time a document was exhibited on
 5 courtroom screen.)

6 **Q** Turning your attention first to

7 Government's Exhibit 3.

8 Where was that photograph taken?

9 **A** In Hempstead.

10 **Q** I would like to hand you a laser pointer, and I ask
 11 you to walk through that exhibit and tell us what you see
 12 in that exhibit in Hempstead.

13 THE WITNESS: Okay to step down?

14 THE COURT: Yes.

15 I think I will dim it anyway to see it better.

16 Hold on a minute now.

17 THE WITNESS: You can see the Gothic lettering,
 18 M-S, the 13 above it, the HMS indicating Hempstead Locos
 19 Salvatruchas. Next to that you can see the spelling out
 20 of La Mara Salvatrucha.

21 **Q** Is there anything at the end of La Mara Salvatrucha
 22 that you can make out?

23 **A** There is also a 13 and three dots.

24 **Q** Turn to 3-A.

25 Would you explain what you see depicted in that

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1 photograph?

2 **A** In this photograph we can see the large MS. This
 3 time it is in block lettering.

4 In the middle is the crest from the El Salvador
 5 flag. We have various persons' names. Again, the LS,
 6 with the initials for the different cliques, CMS, BGLS,
 7 TLS.

8 In the upper left-hand corner here you can see
 9 rest in peace, which are tombstones with gang members'
 10 names within the tombstones.

11 **Q** Where was this photograph taken?

12 **A** This was taken in the maximum security prison in
 13 El Salvador.

14 Also, I want to point out in the middle below
 15 the crest is a hand sign, which is two fingers, the pinky
 16 and pointer finger sticking up, crossed over with the
 17 other two fingers in the middle.

18 **Q** And that's the pinky and the index finger extended?

19 **A** Yes.

20 **Q** And what is that?

21 **A** That is a hand sign used by the MS-13.

22 **Q** And the letters M and S are in blue; is that correct?

23 **A** Yes, that's correct.

24 **Q** And looking at Government's Exhibit 3-B, would you
 25 tell us where this picture was taken?

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1 **A** In a maximum security prison in El Salvador.

2 **Q** What do you see depicted here?

3 **A** Again, lettering, MS, the numbers 13, some initials
 4 from cliques below. MS on top as well.

5 **Q** Moving to Government's Exhibit 3-C, would you tell us
 6 again where that was taken?

7 **A** It was taken at a maximum security prison in
 8 El Salvador. And depicted in this picture are various
 9 names, some tombstones again, RIP, with gang members'
 10 names.

11 **Q** To the left, exactly where you are pointing, would
 12 you tell us what that is?

13 **A** It is written out Mara Salvatrucha.

14 **Q** And that's in blue as well?

15 **A** In blue. Yes.

16 **Q** Please return to the witness stand.

17 I will approach and put before you
 18 Government's Exhibit 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14,
 19 15, 16, 17 and 18.

20 (Handed to the witness.)

21 **Q** I would ask that you look at those photographs.

22 (Whereupon, at this time there was a pause in
 23 the proceedings.)

24 **Q** Sir, have you looked at each of those photographs?

25 **A** Yes, I have.

<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">349</p> <p>1 Q Do you recognize what is depicted in those</p> <p>2 photographs?</p> <p>3 A Yes. These are examples of the tattooing that MS-13</p> <p>4 gang members commonly do.</p> <p>5 Q Have you seen those tattoos on each of the</p> <p>6 individuals actually depicted in the photographs?</p> <p>7 A Yes, I have.</p> <p>8 Q And do the photographs fairly and accurately depict</p> <p>9 the tattoo that you saw on those individuals?</p> <p>10 A Yes, they do.</p> <p>11 MR. DONOGHUE: Your Honor, at this time we move</p> <p>12 to admit Government's Exhibit 4 through 18.</p> <p>13 THE COURT: Any objection?</p> <p>14 MR. LA PINTA: No.</p> <p>15 THE COURT: Government's Exhibit 4 through 18 in</p> <p>16 evidence.</p> <p>17 (Whereupon, Government's Exhibits 4 through 18</p> <p>18 were received in evidence.)</p> <p>19 Q Agent Tariche, I would like to just walk through</p> <p>20 those exhibits, and I will pull up number 4 first.</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">351</p> <p>1 El Salvador on the belly.</p> <p>2 Q And would you look at Government's Exhibit 9 and tell</p> <p>3 what is depicted in that exhibit.</p> <p>4 A Depicted in this exhibit is the MS-13 hand sign again</p> <p>5 that we saw from the previous graffiti in the prison cell</p> <p>6 in El Salvador.</p> <p>7 We also have numerous tombstones with RIP, the</p> <p>8 clique initials, and names.</p> <p>9 Q Moving on to Government's Exhibit 10, can you tell us</p> <p>10 what that is?</p> <p>11 A This exhibit is a tattoo of a chest of an MS-13 gang</p> <p>12 member in the block style lettering, MS.</p> <p>13 Q Moving on to Government's Exhibit 11, can you tell us</p> <p>14 what is depicted in that exhibit?</p> <p>15 A Depicted in this exhibit are block style lettering on</p> <p>16 the arms, inner arms, MS, and then 1 and 3.</p> <p>17 Q Moving on to Government's Exhibit 12, can you tell us</p> <p>18 what is depicted there?</p> <p>19 A Depicted in this exhibit is a tattoo of the belly</p> <p>20 area of an MS-13 member, MS in block style lettering in</p>
<p>21 Would you again explain to us what it is we see</p> <p>22 depicted in that photograph.</p> <p>23 THE WITNESS: Is it okay if I stand again with</p> <p>24 the pointer?</p> <p>25 THE COURT: Surely.</p>	<p>21 the center. And outside, 1, 3, MS-13.</p> <p>22 Q Moving on to Government's Exhibit 13.</p> <p>23 Can you tell us what you see in that exhibit?</p> <p>24 A This is the tattooing of the back of an MS-13 gang</p> <p>25 member in Gothic style lettering, the M and the S. The</p>
<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">350</p> <p>1 THE WITNESS: Depicted in this photo is the 13</p> <p>2 tattooed on the chin of an MS-13 gang member.</p> <p>3 Q Moving to Exhibit 5. What do you see there?</p> <p>4 A Depicted in this tattoo on the back of an MS-13</p> <p>5 member, the two letters, MS, New York, FLS, which is his</p> <p>6 clique, and then the numbers 1 and 3 on the outside of the</p> <p>7 MS.</p> <p>8 Q What clique is FLS?</p> <p>9 A Freeport Locos Salvatruchas.</p> <p>10 Q And moving on to Exhibit number 6, what do you see</p> <p>11 there?</p> <p>12 A Again, this is from the back of an FLS, MS-13 member,</p> <p>13 and his gang name above that.</p> <p>14 Q Okay.</p> <p>15 Would you just spell that for the record.</p> <p>16 A Freeport Locos Salvatruchas.</p> <p>17 Q And the name above it?</p> <p>18 A The name above it is Huesito, H-U-E-S-I-T-O.</p> <p>19 Q Government's Exhibit 7, what is depicted there?</p> <p>20 A Depicted is a tattoo of the three dots, which we also</p> <p>21 saw the three dots in the previous photo from Hempstead.</p> <p>22 Q Moving on to Government's Exhibit 8. What do you see</p> <p>23 in that exhibit?</p> <p>24 A In this exhibit we can see the Gothic lettering MS,</p> <p>25 which stands for Mara Salvatrucha. And then spelled out,</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">352</p> <p>1 hand sign which was on the other tattoo and the prison</p> <p>2 wall in El Salvador.</p> <p>3 Also the three dots, and looking inside are</p> <p>4 other various -- the 13 is right in the center of the M.</p> <p>5 Q There are two figures standing on the shoulder blade</p> <p>6 of that individual, tattooed on the shoulder blade.</p> <p>7 Can you see what the figures are doing in that</p> <p>8 portion of the tattoo?</p> <p>9 A On the upper shoulder of the tattoo of the MS-13 gang</p> <p>10 member are figures doing hand signs, M and S.</p> <p>11 There is another 13 over here in the top of</p> <p>12 the S.</p> <p>13 Q Moving on to Government's Exhibit 14, can you tell us</p> <p>14 what you see in that exhibit?</p> <p>15 A In this exhibit we see again another belly tattoo.</p> <p>16 The M and S in Gothic lettering, standing for Mara</p> <p>17 Salvatrucha, with a 13 in the center of the M.</p> <p>18 Q Moving on to Government's Exhibit 15, can you tell us</p> <p>19 what you see there.</p> <p>20 A This is the back of an MS-13 gang member, again with</p> <p>21 the hand sign which we have seen in other tattooing and</p> <p>22 the graffiti, and the large 1 and 3.</p> <p>23 Q Moving on to Government's Exhibit 16, what do you see</p> <p>24 in that exhibit?</p> <p>25 A In this exhibit we see in block style lettering, the</p>

<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">353</p> <p>1 ^ end pm1 M and S on one wrist. We also see the 13 on the</p> <p>2 other wrist, and the three dots.</p> <p>3 Q Moving on to Government's Exhibit 17, would you</p> <p>4 explain what you see depicted on that exhibit?</p> <p>5 A Depicted on that exhibit is the face of an MS-13 gang</p> <p>6 member on the belly of an MS-13 gang member.</p> <p>7 Written across the forehead is Mara Salvatrucha.</p> <p>8 On the face, that is. Below it is the clique initials</p> <p>9 PVLS. And then numerous times on the skull and face are</p> <p>10 the Gothic lettering, MS.</p> <p>11 Q Moving on to Government's Exhibit 18, can you tell us</p> <p>12 what you see in that exhibit?</p> <p>13 A This is a belly tattoo in the Gothic lettering, MS,</p> <p>14 Roman numeral 10 and 3.</p> <p>15 Q Thank you.</p> <p>16 Please return to the witness stand.</p> <p>17 Agent Tariche, I will put before you a five-page</p> <p>18 exhibit, which is marked for identification as</p> <p>19 Government's Exhibit 18-A.</p> <p>20 Please take a look at that.</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">355</p> <p>1 again?</p> <p>2 THE COURT: Yes.</p> <p>3 Q This is the first page of 18-A.</p> <p>4 Would you tell us what you see on that page?</p> <p>5 A In this exhibit we see the hand sign, which again we</p> <p>6 saw on the tattooing and in the cell in the prison in El</p> <p>7 Salvador, with a 1 and the 3 on the tip of the fingers.</p> <p>8 You see above that Mara Salvatrucha in Gothic</p> <p>9 lettering.</p> <p>10 Upper right-hand corner we see Shorty from PLS.</p> <p>11 The name of a gang member and the clique.</p> <p>12 Below that we see the three dots.</p> <p>13 Moving downward we see letters indicating POR,</p> <p>14 Vida, V-I-D-A, which is Spanish for life.</p> <p>15 Then we see Westbury Locotes, L-O-C-O-T-E-S,</p> <p>16 which indicates the clique for Westbury, and below that</p> <p>17 Mara Salvatrucha.</p> <p>18 Q Moving to page 2 of that exhibit, would you explain</p> <p>19 what we see there.</p> <p>20 A Here we see again the symbol, the hand sign, a</p>
<p>21 (Handed to the witness.)</p> <p>22 Q Sir, do you recognize those pages?</p> <p>23 A Yes.</p> <p>24 Q And what are those pages?</p> <p>25 A These pages are examples of correspondence or letters</p>	<p>21 picture of the hand sign, and another MS-13 hand sign.</p> <p>22 This is an S, the hand sign for an S. This upside down</p> <p>23 would -- is the M. And above it HLS. To the right of it,</p> <p>24 RLS. And again, the name in the middle, gangster.</p> <p>25 At the very bottom there is a 1, and the 3 is</p>
<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">354</p> <p>1 between MS-13 members.</p> <p>2 Q Okay.</p> <p>3 And the actual writing, the script has been</p> <p>4 redacted; is that correct?</p> <p>5 A Yes.</p> <p>6 Q The only thing that remains are some doodlings in the</p> <p>7 pages; is that right?</p> <p>8 A Yes.</p> <p>9 Q And does that photocopy fairly and accurately reflect</p> <p>10 those portions of the correspondence that had not been</p> <p>11 redacted?</p> <p>12 A Yes, they do.</p> <p>13 MR. DONOGHUE: Your Honor, at this time I move</p> <p>14 the admission of Government's Exhibit 18-A.</p> <p>15 THE COURT: Any objection?</p> <p>16 MR. LA PINTA: No.</p> <p>17 THE COURT: Government's Exhibit 18-A, for Abel,</p> <p>18 in evidence.</p> <p>19 (Whereupon, Government's Exhibit 18-A was</p> <p>20 received in evidence.)</p> <p>21 Q Agent Tariche, I will put on the large screen</p> <p>22 Government's Exhibit 18-A.</p> <p>23 (At this time a document was exhibited on</p> <p>24 courtroom screen.)</p> <p>25 MR. DONOGHUE: Your Honor, can he step down</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">356</p> <p>1 blocked out by the photocopying.</p> <p>2 Q Moving to page 3, what do you see there?</p> <p>3 A Here in this letter we also see again the hand sign,</p> <p>4 which we have seen in the other exhibits. We see another</p> <p>5 hand sign here. And this would be the M. The S hand</p> <p>6 sign, the hand sign for 1, and the hand sign for 3.</p> <p>7 So it is MS-13. And we see the three dots</p> <p>8 within the one. And then the clique above, HLS. And to</p> <p>9 the right, FLS.</p> <p>10 Within the letters of the clique you can again</p> <p>11 see the three dots, one, two, three, and with HLS, and</p> <p>12 one, two, three, with the FLS.</p> <p>13 Q Moving to the next page, what do you see on that</p> <p>14 page?</p> <p>15 A We see in Gothic lettering, Mara Salvatrucha.</p> <p>16 Q The next page, what do you see there?</p> <p>17 A In the block style lettering, we see the M and the S,</p> <p>18 with the 13 above it. And then RIP, with the names of</p> <p>19 gang members below the RIP, and within the M and within</p> <p>20 the S.</p> <p>21 Q Would you please return to the witness stand.</p> <p>22 Agent Tariche, I will put before you Exhibits</p> <p>23 19, 20, 20-A, 21, and 21-A for Identification.</p> <p>24 (Handed to the witness.)</p> <p>25 A Okay.</p>

<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">357</p> <p>1 Q You have had a chance to review it?</p> <p>2 A Yes.</p> <p>3 Q Referring you first to Exhibit 19, 20 and 21. Those are photographs; is that correct?</p> <p>5 A Yes.</p> <p>6 Q And generally what is depicted in those photographs?</p> <p>7 A Generally depicted is MS-13 paraphernalia.</p> <p>8 Q And do you recognize the items that are depicted in 9 those photographs?</p> <p>10 A Yes.</p> <p>11 Q And do those photographs fairly and accurately 12 represent the items reflected in the photographs?</p> <p>13 A Yes.</p> <p>14 MR. DONOGHUE: Your Honor, at this time I move 15 to admit Government's Exhibit 19, 20 and 21.</p> <p>16 THE COURT: Does that include 21-A and 20-A?</p> <p>17 MR. DONOGHUE: I was going to do those next, 18 your Honor.</p> <p>19 THE COURT: Okay.</p> <p>20 Any objection?</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">359</p> <p>1 (Whereupon, at this time the following took 2 place at the sidebar.)</p> <p>3 MR. LA PINTA: I'm sorry to interrupt, I need to 4 take a bathroom break.</p> <p>5 THE COURT: We will take a recess now.</p> <p>6 MR. LA PINTA: Please.</p> <p>7 THE COURT: Surely.</p> <p>8</p> <p>9 (Whereupon, at this time the following takes 10 place in open court.)</p> <p>11 THE COURT: We are going to have to take a 12 recess. Something has come up and I have to take care of 13 it.</p> <p>14 In the meantime, please don't discuss the case 15 and keep an open mind.</p> <p>16 This is not bad because you have an opportunity 17 to walk around and get a little exercise.</p> <p>18 Please recess yourselves.</p> <p>19 It will be only a five or ten-minute break.</p> <p>20 (Whereupon, at this time the jury leaves the</p>
<p>21 MR. LA PINTA: No, sir.</p> <p>22 THE COURT: Government's Exhibits 19, 20 and 21, 23 in evidence.</p> <p>24 (Whereupon, Government's Exhibits 19, 20 and 21 25 were received in evidence.)</p>	<p>21 courtroom.)</p> <p>22</p> <p>23 (Whereupon, a recess was taken.)</p> <p>24</p> <p>25</p>
<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">358</p> <p>1 Q And Exhibit number 20 is a photograph of a 2 handkerchief; is that correct?</p> <p>3 A Yes.</p> <p>4 Q And referring you to Exhibit 20-A, is that the actual 5 handkerchief that is in the photograph?</p> <p>6 A Yes, it is.</p> <p>7 Q Okay.</p> <p>8 Government's Exhibit 21 is similarly a picture 9 of a handkerchief; is that correct?</p> <p>10 A Yes.</p> <p>11 Q And is Government's Exhibit 21-A the actual 12 handkerchief that is depicted?</p> <p>13 A Yes, it is.</p> <p>14 MR. DONOGHUE: Your Honor, at this time I move 15 Government's Exhibit 20-A and 21-A.</p> <p>16 THE COURT: Any objection?</p> <p>17 MR. LA PINTA: No.</p> <p>18 THE COURT: Government's Exhibit 20-A and 21-A 19 in evidence.</p> <p>20 (Whereupon, Government's Exhibits 20-A and 21-A were received in evidence.)</p> <p>22 MR. LA PINTA: Judge, may we approach, please?</p> <p>23 THE COURT: Yes. Come on up.</p> <p>24</p> <p>25</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">360</p> <p>1 THE CLERK: Jury entering.</p> <p>2 (Whereupon, the jury at this time entered the 3 courtroom.)</p> <p>4 THE COURT: Please be seated, members of the 5 jury.</p> <p>6 You may proceed, Mr. Donoghue.</p> <p>7 MR. DONOGHUE: Thank you, your Honor.</p> <p>8 BY MR. DONOGHUE:</p> <p>9 Q Agent Tariche, you left off with Exhibit 18-A. 10 I would like to move now to Exhibit 19, and ask 11 you, can you tell us what is depicted in that photograph?</p> <p>12 A Depicted in this photograph is a belt buckle of an 13 MS-13 gang member.</p> <p>14 Q And you see the numbers 1 and 3 on the buckle; is 15 that correct?</p> <p>16 A Yes.</p> <p>17 Q And moving on to Exhibit 20, that is one of the 18 handkerchiefs; is that correct?</p> <p>19 A Yes, that's correct.</p> <p>20 Q And what is it we see depicted in 21 Government's Exhibit 20?</p> <p>22 A We see along the top the letters FLS. The S has 23 three dots within it.</p> <p>24 Moving down the handkerchief you see the Gothic 25 lettering M, S in the middle.</p>

<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">361</p> <p>1 At the bottom there is a 1 and 3 with the</p> <p>2 El Salvador flag.</p> <p>3 Q Between the 1 and 3?</p> <p>4 A Yes.</p> <p>5 Q Are those the correct colors of the El Salvador flag,</p> <p>6 blue and white?</p> <p>7 A Yes.</p> <p>8 Q And do you know if that is why MS-13 uses blue and</p> <p>9 white?</p> <p>10 A Yes, that's correct.</p> <p>11 Q And moving to Exhibit 21, again a photograph of a</p> <p>12 handkerchief.</p> <p>13 Can you tell us what is depicted there, sir?</p> <p>14 A Yes.</p> <p>15 In this handkerchief you can see at the very top</p> <p>16 Gothic lettering, M and S. In-between it is La Mara in</p> <p>17 block lettering. Moving down the handkerchief on the</p> <p>18 outside, you can see the numbers 1 and 3. In-between the</p> <p>19 1 and 3 is Salvatrucha, MS-13 La Mara Salvatrucha along</p> <p>20 the top. Moving down is the Spanish word, Somos, meaning</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">363</p> <p>1 (Whereupon, Government's Exhibit 22 was received</p> <p>2 in evidence.)</p> <p>3 MR. DONOGHUE: Give me one minute to load this,</p> <p>4 your Honor.</p> <p>5 THE WITNESS: Is it all right if I step out,</p> <p>6 your Honor, to explain the video?</p> <p>7 THE COURT: Surely.</p> <p>8 Q Agent Tariche, what I will do is begin to play this</p> <p>9 recording and just ask that you explain to us what we see</p> <p>10 in the recording as it rolls.</p> <p>11 (Videotape is played.)</p> <p>12 A A wake of an MS-13 member at a funeral home in</p> <p>13 Hempstead.</p> <p>14 We see groups or cliques coming up together and</p> <p>15 placing paraphernalia into the coffin, and paraphernalia</p> <p>16 being handkerchiefs. And this particular clique or group</p> <p>17 is down and they are exhibiting hand signs that we saw, we</p> <p>18 saw in the graffiti and the tattooing and the</p> <p>19 correspondence.</p> <p>20 Several members here are using the hand signs,</p>
<p>21 we are.</p> <p>22 Q Is that S-O-M-O-S?</p> <p>23 A Yes, S-O-M-O-S.</p> <p>24 The next word is Pelones, and that's</p> <p>25 P-E-L-O-N-E-S. And that's the name of the clique.</p>	<p>21 and several bandanas have been placed on the body of the</p> <p>22 MS-13 member.</p> <p>23 We see the members wearing the blue bandanas</p> <p>24 here, and more of the MS-13 hand signs in front of the</p> <p>25 coffin.</p>
<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">362</p> <p>1 Below that it says Locotes, which is spelled</p> <p>2 L-O-C-O-T-E-S, which means the crazy one.</p> <p>3 The Spanish word Por, which is P-O-R, below</p> <p>4 that. And next to it another word, Vida, which is</p> <p>5 V-I-D-A.</p> <p>6 So altogether it says we are the crazy Pelones,</p> <p>7 Somos Pelones Locotes Por Vida.</p> <p>8 Q Showing you now what is marked as</p> <p>9 Government's Exhibit 22 for identification.</p> <p>10 That is a computer disk; is that correct?</p> <p>11 A Yes, that's correct.</p> <p>12 Q Do you recognize the disk?</p> <p>13 A I do recognize the disk.</p> <p>14 Q How do you recognize it?</p> <p>15 A Because I have used it many times.</p> <p>16 Q Do you recognize the writing on the disk?</p> <p>17 A Yes.</p> <p>18 Q Do you know what is contained on the disk?</p> <p>19 A Yes, contained on the disk is a video of an MS-13</p> <p>20 member's wake in Hempstead.</p> <p>MR. DONOGHUE: We move Government's Exhibit 22</p> <p>22 for Identification into evidence.</p> <p>23 THE COURT: Any objection?</p> <p>24 MR. LA PINTA: No, your Honor.</p> <p>25 THE COURT: Government's Exhibit 22 in evidence.</p>	<p style="text-align: center;">Tariche-Direct/Donoghue</p> <p style="text-align: right;">364</p> <p>1 The 1 and the 3.</p> <p>2 More members in the back using the hand signs.</p> <p>3 Here you have more members with blue bandanas.</p> <p>4 Now, we fast forward it. It is a seven minute</p> <p>5 CD of a much longer tape. And another group or clique has</p> <p>6 approached together the coffin of the MS-13 gang member.</p> <p>7 And, again, some using the hand signs of the new clique or</p> <p>8 group that has come to the coffin.</p> <p>9 That was a quick flash of a hand sign, an MS-13</p> <p>10 hand sign in front of the camera.</p> <p>11 Q The individual standing closest to the coffin, can</p> <p>12 you see what is on his neck?</p> <p>13 A Yes.</p> <p>14 This individual is wearing blue and white beads,</p> <p>15 which is another paraphernalia used by the MS-13 to</p> <p>16 indicate their membership into the gang.</p> <p>17 Q At the end of this clip, can you see what he does</p> <p>18 with the beads?</p> <p>19 A The video is going to depict him removing his beads</p> <p>20 and quickly placing it into the coffin.</p> <p>21 Now, this is a third group or clique approaching</p> <p>22 together in front of the casket and you will see their</p> <p>23 hand signs as well.</p> <p>24 Here are more members using hand signs.</p> <p>25 Again, the placing of the bandanas and</p>

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1 paraphernalia into the coffin.

2 Q As the members walk by the coffin single file, do you
3 see any hand signs?

A Yes, they are doing hand signs to the coffin as they
5 walk by, one by one.

6 Some are wearing, again, the blue bandanas.

7 More hand signs as they walk past the coffin.

8 Another member placing a bandana into the
9 coffin.

10 Q What do you see at this point?

11 A This is outside the funeral home, and members
12 throwing signs, MS-13 signs at the person taking the
13 video.

14 The same hand signs you saw in the tattooing and
15 the graffiti, and it is throughout the video.

16 Here more hand signs.

17 Q Do you see them spelling out hand signs?

18 A I believe they are spelling out HLS, their clique,
19 the Hempstead Locos Salvatruchas.

20 (Videotape is stopped.)

21 Q The video has ended. You can take the witness stand,
22 Agent Tariche.

23 MR. DONOGHUE: Your Honor, thank you.

24 I have no further questions.

25 THE COURT: Cross-examination.

Tariche-Redirect/Donoghue

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1 Q And I believe there were four altogether; is that
2 correct?

3 A Yes.

4 Q And how much time would you say totally you spent in
5 El Salvador?

6 A Roughly a week each. So approximately a month.

7 Q Would you agree with me that it is a very depressed
8 economy there, sir?

9 A Yes.

10 Q And that poverty is very widespread?

11 A Yes.

12 MR. LA PINTA: I have nothing further.

13 Thank you.

14 THE COURT: Anything else?

15 MR. DONOGHUE: Very briefly, your Honor, if I
16 may.

17 REDIRECT EXAMINATION
18 BY MR. DONOGHUE:

20 Q Mr. LaPinta asked you about whether you were on the
21 task force in 2003.

22 These opinions that you have formed that you
23 presented in your direct regarding the MS-13, do you
24 believe that those were all in place, or that those facts
25 were established prior to 2004?

Tariche-Cross/LaPinta

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1 CROSS-EXAMINATION
2 BY MR. LA PINTA:

4 Q Agent Tariche, the video that we just saw does not
5 involve this case; is that right?

6 A That's correct.

7 Q It has nothing at all to do with this case in terms
8 of the deceased; is that correct?

9 A Correct.

10 Q Sir, in 2003 you were not part of the Long Island
11 bureau; is that correct?

12 A I was part -- not part of the task force, no.

13 Q And you were not involved in the investigation into
14 the death of Jesus Valentin?

15 A Right.

16 Q And you were not involved in the arrest of
17 Mr. Rubi-Gonzalez?

18 A That's correct.

19 Q And you came onto the task force at a later date; is
20 that correct?

A That's correct.

22 Q During your direct testimony, sir, you explained that
23 you have had an occasion -- I should say numerous
24 occasions -- to go to El Salvador?

25 A Yes.

Tariche-Redirect/Donoghue

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1 A Yes.

2 Q Why?

3 A Because of the nature of the MS-13, the MS-13
4 beginning in Los Angeles going back to the middle 90's, at
5 which time I was in Los Angeles.

6 Q And some of these things that you reviewed in terms
7 of recordings, like the video or audio recordings that you
8 reviewed, were some of them prior to 2003?

9 A Yes.

10 MR. DONOGHUE: Thank you.

11 No further questions.

12 THE COURT: Anything else?

13 MR. LA PINTA: Nothing.

14 THE COURT: You may step down, Agent.

15 (Whereupon, the witness leaves the witness
16 stand.)

17 THE COURT: Please call your next witness.

18 MR. DURHAM: Your Honor, the government calls
19 Roberto Romero.

20 Your Honor, may counsel approach very briefly?

21 THE COURT: Yes. Come up.

Exhibit J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : CR 03 851
v. : U.S. Courthouse
Central Islip, N.Y.
LEDWIN CASTRO, :
Defendant. : TRANSCRIPT OF PROCEEDINGS
: September 15, 2009
-----X 1:40 P.M.

BEFORE:

HONORABLE ARTHUR D. SPATT, U.S.D.J.

APPEARANCES:

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Proceedings recorded by mechanical stenography.
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THE COURT: I will deny that motion.

After he testifies he can sit in the courtroom, and he can sit at your counsel table. There is nothing wrong with that.

That leaves us with the Daubert situation.

Now, that is an interesting one because of the fact that we had a sociologist testify. That was very innovative, Mr. Tomao. It might not be successful, but very innovative.

Let's lay the foundation to that by saying Federal Rule of Evidence 702 permits an expert to offer testimony in the form of an opinion if his or her, quote, scientific, technical or other specialized knowledge will assist the trier of the fact to understand the evidence or to determine a fact in issue, end quote, provided that the testimony is based on sufficient facts or data; second, that the testimony is the product of reliable principles and methods; and, third, that the witness has applied the principles and methods reliably to the facts of the case.

Under Rule 702 the Court must determine whether an expert's opinion on the subject will assist the trier of fact, or, in other words, be helpful to the jury.

In addition, the Supreme Court has instructed district courts to serve as, quote, gatekeepers, end quote, and ensure that expert testimony -- and here is the

key -- quote, rests on a reliable foundation, end quote.

And that's the Daubert and the Kumho cases.

So, the Court must determine whether the expert's testimony is grounded on sufficient fact or data, the product of reliable methods, and that the witness applied these methods reliably.

And they have all kinds of other tests as to whether the evidence is reliable.

Of course, this rule, Daubert, has been applied to all expert testimony; and not only scientific testimony which Daubert really centered on -- not only testimony of a technical nature, such as in a products liability case, or a case involving ballistics. But in all other cases where experts testified.

So that Daubert really eliminated what used to be known as the general acceptance standard. And now we have other tests, including the main one, reliability -- relevancy and reliability.

And we know prior to the Second Circuit case in this case that law enforcement officers have been permitted to give expert testimony with respect to the organization of criminal enterprises, such as organized crime and gangs.

In United States against Williams, which is 2007 US appellate LEXIS 24726, decided October 31st, 2007, the

Court went through an excellent discussion about, for example, in that case it was a firearm expert, and that Daubert makes plain that Rule 702 embodies a more liberal standard of admissibility for expert opinions than the previous case called Frye against United States, which is still the law, I believe, in the state court, and emphasizes that Rule 702 requires a District Court to fulfill the gatekeeping function of ensuring that the testimony is reliable. That's the key word.

In the case involving this case in the Second Circuit, United States against Mejia, M-E-J-I-A, 545 F.3d 179, Second Circuit 2008, they talked about the emergence of the officer/expert. Starting in the 1980's a new type of expert witness emerged, namely, the law enforcement officer. And the government began calling law enforcement officers to testify as experts in what is referred to as, quote, the nature and structure of organized crime families, end quote, which started as far back as 1988, approved by the Second Circuit.

In 1986 when the Court first reviewed the challenge for the use of such an expert in United States against Ardito, 782 F.2d 358, Second Circuit 1986, when the government called an FBI agent to testify as an expert about terms such as, captain, capo, regime and crew. The Second Circuit upheld the admission of that testimony

about the organization and the terms used in the organization because it aided the jury in its understanding of recorded conversations in the case. And they were talking about such things as captain and capo and so forth, and crew, and as long as the District Court reminded the jury that this was for the purpose of what it was.

One year after that case in 1987, the Court upheld the admission of expert testimony by a law enforcement officer on the related matter on the meaning or message -- of messages written in code. In other words, these two men were talking, using words that we normal people never heard of. And that was upheld, explaining what the code names were. So, it is organization, the people within the organization, the positions within the organization and the code names used by organization members.

There is testimony by agents identifying the five organized crime families that operate in the New York area; the requirements for membership; the rules of conduct; the code of silence; and the meaning of the jargon.

And yet, there is a thin line between the explanation of the terms of the organization and the membership, the types of members, captains, etcetera,

associates, and the jargon. And there is a thin line between that and factual evidence about what the organization does or did, which information was received from witnesses. And that, of course, runs into the Crawford problem where testimonial evidence of that kind, without an opportunity to be heard by the defense is not admissible.

So, we have to be very careful about that.

One of the important cases, United States against Dukagjini, D-U-K-A-G-J-I-N-I, 326 F.3d 45, Second Circuit 2003, they went too far.

While the agent testified to the word of the trade jargon in general practices of drug dealers, and interpreted various terms such as, quote, dry, end quote, and, quote, cooked, end quote, the agent also addressed specific exchanges in recorded conversations and explain their meaning to the jury. And the Second Circuit said that in that respect, explaining these conversations about what they were doing strayed from the proper expert's function.

And the fact that the government's decision to call the case agent as the expert in that case increased the likelihood that inadmissible and prejudicial testimony would be offered.

So, the Second Circuit identified two ways that

this testimony could not come in, and that, one, about the meaning of conversations in general beyond the interpretation of code words, and relying on hearsay statements that went outside the scope of expertise.

And, so, in this case that went up before the Second Circuit, the convictions were reversed because of the agent's reliance on inadmissible evidence and explaining such evidence to the jury in violation of Crawford.

There was another case tried, and I tried the retrial, as a matter of fact, United States against Rubi-Gonzalez, where the original trial was reversed because of the expert testimony. Currently the same expert had testified, who had testified in this original trial had testified in that original trial. And he testified about matters that the average juror could understand, which violates the rule. As a de facto case agent repeating hearsay evidence and stating out of court testimonial statements made by certain individuals during the course of custodial interrogations, which violated Crawford.

In that case the agent testified that MS-13 dealt in marijuana and cocaine, stole cars and murdered rival gang members in the case of turf wars, and went far beyond interpreting jargon or coded messages, describing

membership rules, or explaining organizational hierarchy. That's the main thing, organizational hierarchy. The agent transmitted hearsay evidence directly to the jury. The evidence included books, newspaper articles, websites, audio recordings and conversations with other law enforcement officers. He communicated out-of-court testimonial statements of cooperating witnesses and informants directly to the jury in the guise of expert opinion. He in fact was summarizing investigations made by other agents.

The Second Circuit held that notwithstanding what could be called overwhelming evidence, his erroneously admitted testimony was not harmless and they reversed the conviction.

Well, in this case we have the testimony of Reynaldo Tariche -- is that right, Tariche, Agent?

S/A TARICHE: Yes, sir.

THE COURT: Reynaldo Tariche has been a Special Agent of the FBI for nineteen years. He has a bachelor of science degree in finance. He had the usual sixteen-week FBI Academy training, and special street force training. He was assigned to Long Beach, California in 1990, in the violent crime task force, where he conducted surveillances, arrests and search warrants.

His investigation included gangs like MS-13 in

California, and then he came to Long Island where he investigated the Bloods, the Crypts, the Latin Kings, the Hells Angels, the SWP and the MS-13. He testified that the largest gang on Long Island was the MS-13.

And this is how he knows about MS-13:

Personal investigation audio and physical surveillance of the meetings of MS-13, audio recordings and telephonic recordings of members of MS-13.

He reviewed correspondence and letters involving MS-13 members. He participated in arrests and searches. He coordinated with other law enforcement officers. He interviewed members and associates. He interviewed some 40 members, and 20 were in custody. He arrested 25 members of MS-13.

He also interpreted -- he found out, learned about and knows about the tattoos of MS-13, the one on the chin, the one and the three on the belly, MS-13; on the back, MS-13 with the hand sign.

I don't know how to do the hand sign too well, but something like that (indicating).

The three dots that he explained meant the three places that MS-13 members end up, prison, hospital and cemetery, the three dots.

And he showed us photographs of all of these hand signs, MS-13, three dots. They were on the back, the

chest, the hands, the forearms, the stomachs and the hand signs, and the graffiti; the handkerchiefs with the blue and white color of El Salvador.

He reviewed videos of MS-13, made by MS-13 members at wakes. He was familiar with investigations made by other agents in the FBI, both in New York, California, Texas, Virginia. He went to El Salvador several times to investigate MS-13 gangs. He attended five seminars on gangs, including when he was the instructor, and reviewed books and articles. And he gave certain opinions which are what the government intends to put in evidence, if I find that he is a reliable expert witness.

His opinions are that the gang, the MS-13, originated in Los Angeles, and thereafter spread to throughout the United States, Texas, Virginia, New York. Also gangs were in Central America and Mexico, El Salvador, Honduras.

His opinion included that these MS-13 -- that the MS-13 hold meetings. They have two types of meetings, a clique meeting, the small group, and a universal meeting comprised of several cliques.

He did not use any information, he said, from interviews with witnesses. He obtained all this information over the years by investigation and working on

this subject. In fact, he said he can set aside in-custody interviews. He can set aside any information he obtained from the defendants in this case. He was not the case agent on this June 18th, 2003 shooting. And although he knows the previous agent who testified as an expert, he never relied on any information from him.

He was vigorously cross-examined by Mr. Tomao. And it was brought out during cross-examination that he started giving lectures on this subject after 2004, and attended conferences after 2004; that he looks at reliability of the sources.

I think that's about what I got from the expert's testimony. Very innovatively the defense put a case on. The defense in this Daubert hearing put on Dr. Louis Kontos, an adjunct associate professor at John Jay College, and another college which I didn't get the name of.

MR. TOMAO: It was Hunter, your Honor.

THE COURT: Pardon?

MR. TOMAO: Hunter.

THE COURT: Hunter College. Thank you.

He has a Ph.D. in sociology. So, he is a sociologist. He previously was an associate professor at LIU and Northeastern University. He taught courses in deviance in social control, published two books on street

gangs.

He sat in the court and heard the testimony of Special Agent Tariche, and he reviewed the testimony that was elicited during the Rubi-Gonzalez case.

He said that there are different methodologies in determining these matters as a sociologist and as a Special Agent of the FBI.

He says -- he testified that he was familiar with the methodology of law enforcement techniques. He taught Massachusetts State Troopers and he taught at John Jay College.

He gave his opinion about this type of testimony. He said he was concerned with contradictory views.

It's not good to say, quote, I studied 20 gang members, end quote, and, therefore, I know what I'm talking about. He says a lot of other things have to be done.

He says that overgeneralization and overstatement is a problem.

As to the methodology of Special Agent Tariche, he objects to certain words, such as research, operation and gang. That he himself worked with gangs since 1986, and that a gang is a complex, loosely knit and disorganized.

And MS-13, he said, is most disorganized, and doesn't support the conclusion that it was a large formal structure.

He doesn't believe that MS-13 13 gangs operate, but that there are certain rituals.

He mentioned the word "synthesize." Which I frankly had trouble understanding.

He said that is not what Special Agent Tariche did. He didn't synthesize.

He testified that he treats the report used by Special Agent Tariche as heuristic, which means shed some light.

And he testified that he doubts that gangs are criminal organizations.

He testifies about harmless little neighborhood cliques, end quote, and apparently it is not MS-13.

And he went on in detail.

He said that many gangs engage in nitpicking and exaggerate their strength, and exaggerate their antisocial nature. It is just acting out, according to him.

I know he stated no authority for this statement, that most gangs exaggerate their strength and antisocial nature and act out these things..

He did testify that Salvadorian police told him, told Dr. Kontos that 40 to 60 percent of the murders are

as a result of gang killings.

And the hospital stated in El Salvador, I believe, that twelve percent of the murders were gang-related; and that adult organized criminals were capable of using the gangs as a method of operation.

He testified that the Special Agent, Tariche, was not a, quote, social scientist, end quote.

Well, I don't know if he has to be a social scientist in order to testify about the MS-13 gang.

Also, on cross-examination he admitted that he is not an expert on the MS-13, never worked in law enforcement, never arrested anyone, never conducted a surveillance, nor has he listened to any wiretap of MS-13 members.

He did interview MS members on Long Island and in Los Angeles. Quote, they are the big problem, end quote, he said.

He was never to El Salvador.

He published a book on gangs. He edited a book. He discussed MS-13 gangs, and stated, it's a violent street ring, R-I-N-G.

And he testified on cross-examination, that he believed that the MS-13 engages in violence.

He himself conducted interviews, reviewed literature, and relied on them.

He talked about rituals and symbols, including tattoos, and hand signs.

So, the Court finds the following:

One, Special Agent Tariche does not have to be a sociologist, or a social scientist in order to testify as an expert witness on the MS-13 gang.

Two, Dr. Kontos does not set the only standard for reliable expert testimony on the MS-13 gang..

Three, sociologists don't set the standard for expert testimony by a Special Agent of the FBI expert on the MS-13 gang.

In conclusion, I find that the testimony of Special Agent Reynaldo Tariche, based on his experience, based on his investigation, based on his examination of the video, arrest, searches, over a long period of time, has put him in position to be an expert on the MS-13 gang. The matters on which he testified at this hearing are admissible at the trial.

Namely: One, the organization of the MS-13 gang; the hierarchy of the MS-13 gang; the membership of the MS-13 gang; the clique; the universal meeting; and the explanation of any code name; and the explanation of any code words can be testified to by Special Agent Tariche. And that's it.

Is there anything else at this time? I know I